

No. 12376

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United States  
Court of Appeals  
For the Ninth Circuit.

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CITY AND COUNTY OF HONOLULU,  
Appellant,

VS.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
District of Hawaii.

FILED

JAN 4 - 1950

PAUL P. O'BRIEN,  
Clerk



No. 12376

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United States  
Court of Appeals  
For the Ninth Circuit.

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CITY AND COUNTY OF HONOLULU,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF  
ATTORNEYS OF RECORD

For the Petitioner, United States of America,

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Honolulu, T. H.

For the Defendant, City and County of Honolulu,

WILFORD D. GODBOLD, ESQ.,

City and County Attorney,

FRANK A. McKINLEY, ESQ.

Deputy City and County Attorney,  
City Hall,  
Honolulu, T. H.

In the District Court of the United States  
for the District of Hawaii

October Term, 1945

Civil No. 695

UNITED STATES OF AMERICA,

Petitioner,

vs.

34.03 ACRES OF LAND, MORE OR LESS LO-  
CATED AT PEARL CITY PENINSULA,  
OAHU, TERRITORY OF HAWAII, CITY  
AND COUNTY OF HONOLULU; TERRI-  
TORY OF HAWAII; FRANK L. JAMES,  
et al.,

Defendants.

### PETITION FOR CONDEMNATION

To the Honorable, the Presiding Judges of the  
United States District Court for the District of  
Hawaii:

Now comes the United States of America, by  
Charles F. Rathbun, Special Assistant to the Attor-  
ney General, acting under the instructions of the At-  
torney General of the United States and at the re-  
quest of the Secretary of Navy and respectfully  
represents to the Court:

#### I.

That this proceeding is instituted under the au-  
thority of divers and Sundry Acts of Congress,  
among them the following:



The Act of Congress approved March 27, 1942  
(Public Law 507 — 77th Congress) as  
amended by

The Act of Congress approved December 20,  
1944  
(Public Law 509—78th Congress)

The Act of Congress approved June 26, 1943  
(Public Law 92—78th Congress)

The Act of Congress approved June 22, 1944  
(Public Law 347—78th Congress)

and that the Secretary of Navy, acting under authority vested in him by law has determined that it is necessary that the United States of America acquire by condemnation, by judicial process, certain lands being all streets, roads, and highways (except Lehua Avenue) and lie within the perimeter of the description shown on Exhibit "A" hereto attached and made a part hereof as though set forth at length and within the perimeter shown on map attached hereto and marked Exhibit "B", subject to existing public utility easements and all other public utility rights of any nature whatsoever.

## II.

That the lands sought to be condemned are located at Pearl City Peninsula, Oahu, Territory of Hawaii, and lie wholly within the jurisdiction of this Court.

## III.

That the estate sought to be condemned in this action is fee simple title to said streets, roads, and highways (except Lehua Avenue), subject to existing public utility easements and all other public utility rights of any nature whatsoever, and said lands are to be used in connection with the Pearl Harbor Security Strip Perimeter Acquisition.

## IV.

That the City and County of Honolulu; Territory of Hawaii; Frank L. James, and all other persons, companies or corporations, either known or unknown, who claim to have or own any right, title or interest of any character whatever in said lands, are made defendants herein.

## V.

That the Secretary of Navy of the United States has determined that the utmost haste in expediting this project is vital to the public use of said land and that he has, therefore, determined that possession of said lands, to the extent of the interest to be acquired therein, is necessary by the United States and that certain and adequate provisions have been made for the payment of just compensation which may be adjudged due for the condemnation of the lands described and shown herein on said Exhibits "A" and "B."

Wherefore, your petitioner prays this Honorable

Court to take jurisdiction of this cause and enter all orders, judgments and decrees necessary to determine title of said real estate condemned, or any part thereof, and to grant immediate possession thereof to the United States of America; that upon payment into the registry of this Court for the use of the persons entitled thereto of the sums adjudged to be full compensation for the condemnation of said lands, that title of said land be vested in the United States of America in fee simple, subject to the conditions herinabove recited, and that the Court make distribution of the final awards among the persons entitled thereto as expeditiously as may be and for such other relief as to the Court may seem just and proper in the premises.

UNITED STATES OF  
AMERICA,

By /s/ CHARLES F. RATHBUN,  
Special Assistant to the  
Attorney General.

AFFIDAVIT

District of Hawaii,  
City and County of Honolulu—ss.

Charles F. Rathbun, being first duly sworn on oath, deposes and says: That he is a Special Assistant to the Attorney General of the United States, that he has read the foregoing Petition for Condemnation and knows the contents thereof and that the

same is true to the best of his knowledge, information and belief.

/s/ CHARLES F. RATHBUN.

Subscribed and sworn to before me this 8th day of January, 1946.

[Seal] /s/ THOS. C. CUMMINS,  
Deputy Clerk of the United States District Court for  
the District of Hawaii.

### EXHIBIT "A"

#### Legal Description of Pearl City Peninsula

Situated on the South side of the Oahu Railway and Land Company's 40-foot right-of-way.

At Manana and Waimano, Ewa, Oahu, T. H.

Beginning at the northwest corner of this tract of land, being also the northwest corner of Lot 2-A, Section 3 as shown on Map 9, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application 945, in the south line of Oahu Railway and Land Company's 40-foot right-of-way and on the east bank of Waiawa Stream, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church," being 1024.13 feet south and 1111.96 feet east, thence running by azimuths measured clockwise from south:

1. Along the south line of the Oahu Railway and Land Company's 40-foot right-of-way to a point, the coordinates of said point referred to Government

Exhibit "A"—(Continued)

Survey Triangulation Station "Ewa Church" being 723.73 feet south and 4,938.47 feet East;

2.  $67^{\circ} 51' 20.14$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

3.  $341^{\circ} 50' 24.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

4.  $325^{\circ} 00' 58.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

5.  $318^{\circ} 35' 54.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

6.  $301^{\circ} 00' 36.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

7.  $325^{\circ} 40' 26.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

8.  $339^{\circ} 00' 51.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

9.  $337^{\circ} 40' 78.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

10.  $347^{\circ} 40' 30.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

11.  $356^{\circ} 05' 26.20$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

12.  $67^{\circ} 30' 161.10$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

13.  $71^{\circ} 10' 247.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

14.  $342^{\circ} 35' 207.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

## Exhibit "A"—(Continued)

15.  $340^{\circ} 50' 64.0$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu;

16.  $78^{\circ} 48' 231.94$  feet along the remainder of Grant 215 to Nahi;

17.  $337^{\circ} 43' 137.40$  feet along the remainder of R. P. 4475, L. C. Aw. 7713 Apana 47 to V. Kamamalu, to the high water mark of Pearl Harbor;

18. Thence along the high water mark of Pearl Harbor, in all its turns and windings to the mouth of Waiawa Stream;

19. Thence along the east bank of Waiawa Stream to the point of beginning.

[Endorsed]: Filed January 8, 1946.

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[Title of District Court and Cause.]

## PETITION FOR CONDEMNATION.

## Appearance

Comes now the Territory of Hawaii, one of the defendants herein, by Michiro Watanabe, Deputy Attorney General of said Territory, its attorney, and makes and files this its appearance in the above entitled matter.

Dated at Honolulu, T. H., this 9th day of January, 1946.

TERRITORY OF HAWAII,

By /s/ MICHIRO WATANABE,

Deputy Attorney General,  
its attorney.

[Endorsed]: Filed January 10, 1946.



[Title of District Court and Cause.]

### APPEARANCE

Comes now Arthur H. Spitzer, Esq., Deputy City and County Attorney, and files an appearance herein in behalf of the City and County of Honolulu, one of the defendants named in the above entitled cause.

Dated at Honolulu, T. H., this 16th day of January, A. D., 1946.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ ARTHUR H. SPITZER,  
Deputy City and County  
Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed January 16, 1946.

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[Title of District Court and Cause.]

### ORDER AMENDING PETITION

Upon motion of the Petitioner herein,

It Is Hereby Ordered that the Petition herein be amended by adding to said Petition after the words and letters, Exhibit "B" in the third line from the top of Page 2 of said Petition the following:

"and described and shown on Exhibits "C," "C-1," "C-2," "C-3," "C-4," "C-5," "C-6" and Exhibits "D," "D-1," "D-2," and "D-3," which said Exhibits are hereto attached and made a part hereof as though set forth at length."

And that the said Exhibits, copies of which are attached to this order, are to be made a part of said Petition.

Dated: Honolulu, T. H., this 31st day of May, 1946.

/s/ D. E. METZGER,

Judge of the United States District Court for the District of Hawaii.

### EXHIBIT C

Descriptions of roads within the Pearl City Lots (Peninsula Section) Situate at Manana and Waimano, Ewa, Oahu, T. H.

Apparent Owner—Territory of Hawaii

Being Portions of the Ili of Kaholona, Portion of Apana 2 of Land Patent 8168 on Land Commission Award 8305, Apana 2 to P. Kanoa and Portions of the Ili of Opukaula, Royal Patent 4475, Land Commission Award 7713, Apana 47 to V. Kamamalu.

A. Lying within portion "T," U. S. Naval Pearl Harbor Perimeter Acquisition (all as delineated on 14th Naval District drawing No. OA-N1-1132)

#### 1. Kirkbride Avenue

Beginning at the Southwest corner of this parcel of land, being also the Southwest corner of Ashley Avenue and the Northeast corner of Block 40 of the Pearl City Peninsula Lots (Tract 22, Portion "V" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Sta-



Exhibit C—(Continued)

tion “Banning” being 1151.45 feet North and 1974.97 feet East, and running by azimuths measured clockwise from True South:

1. 167° 24′ 680.00 feet across Ashley Avenue and along the Easterly side of Block 43 of the Pearl City Peninsula Lots (Tracts 85, 87, 88, 90, 92, 94 and 99, Portion “S” of Perimeter Acquisition);

2. 257° 24′ 80.00 feet along the Southerly side of Palm Avenue;

3. 347° 24′ 680.00 feet along the Westerly side of Block 42 of the Pearl City Peninsula Lots (Tracts 1, 2 and 3, Portion “T” of Perimeter Acquisition) and a remainder of L. C. Aw. 7713, Apana 47 to V. Kamamalu;

4. 77° 24′ 80.00 feet across Kirkbride Avenue to the point of beginning and containing an area of 54,400 square feet.

2. Palm Avenue

Beginning at the Southwest corner of this parcel of land, being also the Northeast corner of Block 43 of the Pearl City Peninsula Lots (Tract 85, Portion “S” of Perimeter Acquisition) and the Northwest corner of Kirkbride Avenue, the coordinates of which referred to Government Survey Triangulation Station “Banning” being 1815.07 feet North and 1826.63 feet East, and running by azimuths measured clockwise from true South:

1. 167° 24′ 62.00 feet across Palm Avenue;

## Exhibit C—(Continued)

2. 257° 24' 80.00 feet along Grant 8371 to M. Elnora Sturgeon;

3. 347° 24' 62.00 feet along Grant 8371 to M. Elnora Sturgeon and a remainder of L. C. Aw. 7713, Apana 47 to V. Kamamalu;

4. 77° 24' 80.00 feet along the Northerly side of Kirkbride Avenue to the point of beginning and containing an area of 4,960 square feet.

B. Lying within Portion "U" U. S. Naval Pearl Harbor Perimeter Acquisition (all as delineated on 14th Naval District drawing No. OA-N1-1133)

1. Robinson Avenue

Beginning at the Southwest corner of this parcel of land, on the Northerly side of Franklin Avenue, being also the Southeast corner of Block 34 of the Pearl City Peninsula Lots (Tract 22, Portion "U" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station "Banning" being 364.42 feet South and 1061.05 feet East, and running by azimuths measured clockwise from true South:

1. 167° 24' 1280.00 feet along the Easterly side of Block 34 of the Pearl City Peninsula Lots (Tracts 22, 21, 20, 36, 35, 34, 18 and 17, Portion "U" of Perimeter Acquisition), the Easterly side of Lanakila Avenue and the Easterly side of Block 37 of the Pearl City Peninsula Lots (Tracts 8, 7, 6, 5, 4, 3, 2 and 1 Portion "U" of Perimeter Acquisition);

Exhibit C—(Continued)

2.  $257^{\circ} 24'$  82.60 feet along the Southerly side of Ashley Avenue;

3.  $347^{\circ} 24'$  1280.00 feet along the Westerly side of Block 38 of the Pearl City Peninsula Lots, Lanakila Avenue and Block 33 of the Pearl City Peninsula Lots (Tracts 1, 2-A, 65, 37, 39, 44, 46 and 47, Portion "V" of Perimeter Acquisition);

4.  $77^{\circ} 24'$  82.60 feet along the Northerly side of Franklin Avenue to the point of beginning and containing an area of 105,728 square feet.

2. Laniwai Avenue

Beginning at the Southwest Corner of this parcel of land at the Northwest corner of Franklin Avenue and on the Easterly side of U. S. Naval Reservation, Civil No. 505, the coordinates of which referred to Government Survey Triangulation Station "Bran-ning" being 447.25 feet South and 690.52 feet East, and running by azimuths measured clockwise from true South:

1.  $167^{\circ} 20'$  347.30 feet along U. S. Naval Reservation, Civil No. 505;

2.  $167^{\circ} 26' 30''$  84.78 feet along government road, 60 feet wide;

3.  $167^{\circ} 24'$  847.92 feet along land owned by the Oahu Railway and Land Co., Lanakila Avenue and Block 36 of the Pearl City Peninsula Lots (Tracts

## Exhibit C—(Continued)

31, 30 and 29, Portion "U" of Perimeter Acquisition);

4. 257° 24' 80.00 feet along the Southerly side of Ashley Avenue;

5. 347° 24' 1280.00 feet along the Westerly side of Block 37 of the Pearl City Peninsula Lots, Lanakila Avenue and Block 34 of the Pearl City Peninsula Lots (Tracts 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 37, 19, 25, 26, 27, 28 and 22, Portion "U" of Perimeter Acquisition);

6. 77° 24' 79.67 feet along the Northerly side of Franklin Avenue to the point of beginning and containing an area of 102,361 square feet.

3. Lanakila Avenue

Part 1

Beginning at the Northeast corner of this parcel of land at the Southeast corner of Block 36 of the Pearl City Peninsula Lots (Tract 30, Portion "U" of Perimeter Acquisition) and on the Westerly side of Laniwai Avenue, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 216.30 feet North and 541.85 feet East, and running by azimuths measured clockwise from true South:

1. 347° 24' 80.00 feet along the Westerly side of Laniwai Avenue;

2. 77° 24' 252.77 feet along the Northerly side of land owned by the Oahu Railway and Land Co.

## Exhibit C—(Continued)

(Tract 31, Portion “U” of Perimeter Acquisition) and along government road, 60 feet wide;

3.  $167^{\circ} 24' 80.00$  feet across Lanakila Avenue (Easterly side of Parcel 32, Portion “U” of Perimeter Acquisition);

4.  $257^{\circ} 24' 252.77$  feet along the Southerly side of Block 36 of the Pearl City Peninsula Lots (Tract 30, Portion “U” of Perimeter Acquisition) to the point of beginning and containing an area of 20,222 square feet.

## Part 2

Beginning at the Southwest corner of this parcel of land, on the Easterly side of Laniwai Avenue and at the Northwest corner of Block 34 of the Pearl City Peninsula Lots (Tract 23, Portion “U” of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station “Banning” being 155.68 feet North and 637.38 feet East, and running by azimuths measured clockwise from true South:

1.  $167^{\circ} 24' 80.00$  feet along the Easterly side of Laniwai Avenue;

2.  $257^{\circ} 24' 300.00$  feet along the Southerly side of Block 37 of the Pearl City Peninsula Lots (Tracts 16 and 8, Portion “U” of Perimeter Acquisition);

3.  $347^{\circ} 24' 80.00$  feet along the Westerly side of Robinson Avenue;

4.  $77^{\circ} 284' 300.00$  feet along the Northerly side of



## Exhibit C—(Continued)

Block 34 of the Pearl City Peninsula Lots (Tracts 17 and 23, Portion "U" of Perimeter Acquisition) to the point of beginning and containing an area of 24,000 square feet.

4. 60-foot Road Between Laniwai and Lanakila Avenues

Beginning at the Northeast corner of this parcel of land at the Westerly corner of land owned by the Oahu Railway and Land Co. (Tract 31, Portion "U" of Perimeter Acquisition) and on the Southerly side of Lanakila Avenue, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 101.60 feet North and 395.42 feet East, and running by azimuths measured clockwise from true South:

1.  $302^{\circ} 24'$  237.48 feet along land owned by the Oahu Railway and Land Co. (Tract 31, Portion "U" of Perimeter Acquisition);

2.  $347^{\circ} 26' 30''$  84.78 feet along the Westerly side of Laniwai Avenue;

3.  $122^{\circ} 24'$  357.37 feet along U. S. Naval Reservation, Civil No. 505, and along Block 35 of the Pearl City Peninsula Lots (Tract 33, Portion "U" of Perimeter Acquisition);

4.  $257^{\circ} 24'$  84.85 feet along the Southerly side of Lanakila Avenue to the point of beginning and containing an area of 17,844 square feet.

C. Lying within Portion "V," U. S. Naval Pearl Harbor Perimeter Acquisition (all as delineated on 14th Naval District drawing No. OA-NI-1134)

## Exhibit C—(Continued)

## 1. Lowella Avenue

Beginning at the Southwest corner of this parcel of land, on the Northerly side of Franklin Avenue, being also the Southeast corner of Block 33 of the Pearl City Peninsula Lots (Tract 49, Portion "V" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station "Banning" being 280.98 feet South and 1434.45 feet East, and running by azimuths measured clockwise from true South:

1.  $167^{\circ} 24'$  1280.00 feet along the Easterly side of Block 33 of the Pearl City Peninsula Lots (Tracts 49, 45, 43, 42, 41, 40 and 38, Portion "V" of Perimeter Acquisition), across Lanakila Avenue and along the Easterly side of Block 38 of the Pearl City Peninsula Lots (Tracts 2-B, 3 and 1, Portion "V" of Perimeter Acquisition);

2.  $257^{\circ} 24'$  80.00 feet along the Southerly side of Ashley Avenue;

3.  $347^{\circ} 24'$  1280.00 feet along the Westerly side of Block 39 of the Pearl City Peninsula Lots (Tracts 4, 7, 9, 11, 13, 15 and 16, Portion "V" of Perimeter Acquisition), across Lanakila Avenue and along the Westerly side of Block 32 of the Pearl City Peninsula Lots (Tracts 50, 53, 55, 56, 57, 58, 60, 62 and 64, Portion "V" of Perimeter Acquisition);

4.  $77^{\circ} 24'$  80.00 feet along the Northerly side of Franklin Avenue to the point of beginning and containing an area of 102,400 square feet.

## Exhibit C—(Continued)

## 2. Lanakila Avenue

## Part 1

Beginning at the Southwest corner of this parcel of land, on the Easterly side of Robinson Avenue, being also the Northwest corner of Block 33 of the Pearl City Peninsula Lots and the Northwest corner of Tract 37, Portion "V" of Perimeter Acquisition, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 239.13 feet North and 1010.79 feet East, and running by azimuths measured clockwise from true South:

1. 167° 24' 80.00 feet across Lanakila Avenue;
2. 257° 24' 300.00 feet along the Southerly side of Block 38 of the Pearl City Peninsula Lots (Tracts 65 and 2-B, Portion "V" of Perimeter Acquisition);
3. 347° 24' 80.00 feet across Lanakila Avenue;
4. 77° 24' 300.00 feet along the Northerly side of Block 33 of the Pearl City Peninsula Lots (Tracts 38 and 37, Portion "V" of Perimeter Acquisition) to the point of beginning and containing an area of 24,000 square feet.

## Part 2

Beginning at the Southwest corner of this parcel of land, on the Easterly side of Lowell Avenue, being also the Northwest corner of Block 32 of the Pearl City Peninsula Lots and the Northwest corner of Tract 50, Portion "V" of Perimeter Acquisition,



## Exhibit C—(Continued)

the coordinates of which referred to Government Survey Triangulation Station “Banning” being 322.02 feet North and 1381.64 feet East, and running by azimuths measured clockwise from true South:

1. 167° 24′ 80.00 feet across Lanakila Avenue;
2. 257° 24′ 300.00 feet along the Southerly side of Block 39 of the Pearl City Peninsula Lots (Tracts 16, 17, and 14, Portion “V” of Perimeter Acquisition;
3. 347° 24′ 80.00 feet across Lanakila Avenue.
4. 77° 24′ 300.00 feet along the Northerly side of Block 32 of the Pearl City Peninsula Lots (Tracts 52, 51 and 50, Portion “V” of Perimeter Acquisition) to the point of beginning and containing an area of 24,000 square feet.

## Part 3

Beginning at the Northwest corner of this parcel of land, on the Easterly side of Lehua Avenue, being also the Southwest corner of Block 40 of the Pearl City Peninsula Lots and the Southwest corner of Tract 32, Portion “V” of Perimeter Acquisition, the coordinates of which referred to Government Survey Triangulation Station “Banning” being 487.33 feet North and 1754.56 feet East, and running by azimuths measured clockwise from true South:

1. 257° 24′ 360.00 feet along the Southerly side of Block 40 of the Pearl City Peninsula Lots (Tracts 32, 34, 35 and 36, Portion “V” of Perimeter Acquisition);

## Exhibit C—(Continued)

2. 347° 24' 80.00 feet along the Westerly side of Kirkbride Avenue;

3. 77° 24' 360.00 feet along the Northerly side of Land Court Application 912 Parcel B (Tract 2, Portion "W" of Perimeter Acquisition);

4. 167° 24' 80.00 feet across Lanakila Avenue to the point of beginning and containing an area of 28,800 square feet.

3. Kirkbride Avenue

Beginning at the Northwest corner of this parcel of land, on the Southerly side of Ashley Avenue, being also the Northeast corner of Block 40 of the Pearl City Peninsula Lots (Tract 22, Portion "V" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station "Banning" being 1151.42 feet North and 1975.00 feet East, and running by azimuths measured clockwise from true South:

1. 257° 24' 80.00 feet across Kirkbride Avenue;

2. 347° 24' 680.00 feet along the Westerly side of Block 41 of the Pearl City Peninsula Lots and Lanakila Avenue (Tracts 4, 5 and 6, Portion "T" of Perimeter Acquisition, and Tract 1, Portion "W" of Perimeter Acquisition);

3. 77° 24' 80.00 feet across Kirkbride Avenue;

4. 167° 24' 680.00 feet across Lanakila Avenue and along the Easterly side of Block 40 of the Pearl City Peninsula Lots (Tracts 36, 33, 31, 29, 27, 25,

Exhibit C—(Continued)

21 and 22, Portion “V” of Perimeter Acquisition) to the point of beginning and containing an area of 54,400 square feet.

D. Lying Within Portion “W,” U. S. Naval Pearl Harbor Perimeter Acquisition (All As Delineated On 14th Naval District Drawing No. OA-NI-1135)

1. Kirkbride Avenue

Beginning at the Southwest corner of this parcel of land, on the Northerly side of Franklin Avenue, being also the Southeast corner of Land Court Application 912, Parcel B (Tract 2, Portion “W” of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station “Banning” being 97.72 feet South and 2254.20 feet East, and running by azimuths measured clockwise from true South:

1. 167° 24′ 600.00 feet along the Easterly side of Land Court Application 912, Parcel B (Tract 2, Portion “W” of Perimeter Acquisition);

2. 257° 24′ 80.00 feet across Kirkbride Avenue;

3. 347° 24′ 600.00 feet along the Westerly side of Land Court Application 912, Parcel A (Tract 3, Portion “W” of Perimeter Acquisition);

4. 77° 24′ 80.00 feet along the Northerly side of Franklin Avenue to the point of beginning and containing an area of 1.102 acres.

2. Lanakila Avenue

Beginning at the Northwest corner of this parcel

## Exhibit C—(Continued)

of land, on the Easterly side of Kirkbride Avenue, being also the Southwest corner of Block 41 of the Pearl City Peninsula Lots (Tract 1, Portion "W" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station "Banning" being 583.35 feet North and 2183.93 feet East, and running by azimuths measured clockwise from true South:

1. 257° 24' 380.00 feet along the Southerly side of Block 41 of the Pearl City Peninsula Lots (Tract 1, Portion "W" of Perimeter Acquisition);

2. 347° 24' 80.00 feet along a remainder of L. C. Aw. 7713, Apana 47 to V. Kamamalu (Tract 4, Portion "W" of Perimeter Acquisition);

3. 77° 24' 380.00 feet along Land Court Application 912, Parcel A (Tract 3, Portion "W" of Perimeter Acquisition);

4. 167° 24' 80.00 feet along the Easterly side of Kirkbride Avenue to the point of beginning and containing an area of 0.698 acre.

E. Lying Within Portion "X", U. S. Naval Pearl Harbor Perimeter Acquisition (All As Delineated On 14th Naval District Drawing No. OA-NI-1136)

1. Coral Avenue

Beginning at the Southeast corner of this parcel of land, being also the Southwest corner of Aloha Avenue, and on the Northerly boundary of U. S.

## Exhibit C—(Continued)

Naval Reservation, Civil No. 515, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 934.41 feet South and 1097.93 feet East, and running by azimuths measured clockwise from true South:

1.  $77^{\circ} 24'$  79.98 feet along U. S. Naval Reservation, Civil No. 515;

2.  $167^{\circ} 22'$  217.22 feet along U. S. Naval Reservation Civil No. 505; then along U. S. Naval Reservation, Civil No. 505, on a curve to the left, with a radius of 197.23 feet, the chord azimuth and distance being:

3.  $138^{\circ} 53' 10''$  188.10 feet;

4.  $110^{\circ} 24' 30''$  43.65 feet along U. S. Naval Reservation, Civil No. 505; thence along U. S. Naval Reservation, Civil No. 505, on a curve to the right, with a radius of 186.30 feet, the chord azimuth and distance being:

5.  $138^{\circ} 52' 10''$  177.58 feet;

6.  $167^{\circ} 20'$  2.00 feet along U. S. Naval Reservation, Civil No. 505;

7.  $257^{\circ} 24'$  292.27 feet along the Southerly side of Laniwai Avenue and Block 34 of the Pearl City Peninsula Lots (Tract 22, Portion "U" of Perimeter Acquisition);

8.  $347^{\circ} 24'$  482.00 feet along the Westerly side of Franklin Avenue and along the Westerly side of Block 28 of the Pearl City Peninsula Lots (Tracts 1,



## Exhibit C—(Continued)

9 and 10, Portion “X” of Perimeter Acquisition);

9. 348° 03' 30" 82.31 feet along the Westerly side of Aloha Avenue to the point of beginning and containing an area of 82,104 square feet.

2. Franklin Avenue

Beginning at the Northeast corner of this parcel of land, on the Westerly side of Lehua Avenue, being also the Southeast corner of Block 32 of the Pearl City Peninsula Lots (Tract 64, Portion “V” of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station “Banning” being 198.07 feet South and 1805.29 feet East, and running by azimuths measured clockwise from true South:

1. 347° 24' 82.00 feet along the Westerly side of Lehua Avenue;

2. 77° 24' 850.00 feet along the Northerly side of Block 28 of the Pearl City Peninsula Lots (Tracts 7, 6, 5, 4, 3, 2 and 1, Portion “X” of Perimeter Acquisition);

3. 167° 24' 82.00 feet along the Easterly side of Coral Avenue;

4. 257° 24' 850.00 feet along the Southerly side of Block 34 of the Pearl City Peninsula Lots, Robinson Avenue, Block 33 of the Pearl City Peninsula Lots, Lowella Avenue and Block 32 of the Pearl City Peninsula Lots (Tract 22, Portion “U” of Perimeter Acquisition and Tracts 47, 48, 49 and 64,

## Exhibit C—(Continued)

Portion “V” of Perimeter Acquisition) to the point of beginning and containing an area of 69,700 square feet.

## 3. Aloha Avenue

Beginning at the Southwest corner of this parcel of land, on the Easterly side of Coral Avenue and on the Northerly boundary of U. S. Naval Reservation, Civil No. 515, the coordinates of which referred to Government Survey Triangulation Station “Banning” being 934.41 feet South and 1097.93 feet East, and running by azimuths measured clockwise from true South:

1.  $168^{\circ} 03' 30''$  82.31 feet along the Easterly side of Coral Avenue;

2.  $257^{\circ} 24'$  850.00 feet along the Southerly side of Block 28 of the Pearl City Peninsula Lots (Tracts 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, Portion “X” of Perimeter Acquisition);

3.  $347^{\circ} 24'$  82.30 feet along the Westerly side of Lehua Avenue;

4.  $77^{\circ} 24'$  850.95 feet along U. S. Naval Reservation, Civil No. 515, to the point of beginning and containing an area of 69,997 square feet.

F. Lying Within Portion “Y”, U. S. Naval Pearl Harbor Perimeter Acquisition (All As Delineated On 14th Naval District Drawing No. OA-NI-1137)

## Exhibit C—(Continued)

## 1. Coral Avenue

Beginning at the West corner of this parcel of land, on the Northerly boundary of U. S. Naval Reservation, Civil No. 515, being also the Southeast corner of Aloha Avenue, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 640.52 feet South and 2411.36 feet East, and running by azimuths measured clockwise from true South:

Along the Easterly side of Aloha Avenue, on a curve to the right, with a radius of 755.70 feet, the chord azimuth and distance being:

1.  $193^{\circ} 40' 07''$  26.33 feet;

2.  $194^{\circ} 40' 45.83$  feet along the Easterly side of Aloha Avenue; thence along the Easterly side of Aloha Avenue and Block 29 of the Pearl City Peninsula Lots (Tracts 11 and 12, Portion "Y" of Perimeter Acquisition), on a curve to the right, with a radius of 960.00 feet, the chord azimuth and distance being:

3.  $200^{\circ} 10' 184.02$  feet;

4.  $205^{\circ} 40' 94.20$  feet along the Easterly side of Block 29 of the Pearl City Peninsula Lots (Tract 12, Portion "Y" of Perimeter Acquisition); thence along the Easterly side of Block 29 of the Pearl City Peninsula Lots (Tracts 12 and 4, Portion "Y" of Perimeter Acquisition), on a curve to the left, with a radius of 300.00 feet, the chord azimuth and distance being:



Exhibit C—(Continued)

5.  $186^{\circ} 32'$  196.66 feet;
6.  $167^{\circ} 24'$  85.16 feet along the Easterly side of Block 29 of the Pearl City Peninsula Lots (Tract 4, Portion "Y" of Perimeter Acquisition) and across Franklin Avenue;
7.  $257^{\circ} 24'$  170.00 feet along the Southerly side of Land Court Application 912, Parcel A (Tract 3, Portion "W" of Perimeter Acquisition);
8.  $347^{\circ} 24'$  82.00 feet along a remainder of L. C. Aw. 7713, Apana 47 to V. Kamamalu (Tract 4, Portion "W" of Perimeter Acquisition);
9.  $77^{\circ} 24'$  1.41 feet along the Northerly side of Block 25 of the Pearl City Peninsula Lots (Tract 13, Portion "Y" of Perimeter Acquisition); thence along the Northwesterly side of Block 25 of the Pearl City Peninsula Lots (Tracts 13 and 14, Portion "Y" of Perimeter Acquisition), on a curve to the left, with a radius of 90.00 feet, the chord azimuth and distance being:
10.  $42^{\circ} 24' 45''$  103.21 feet;
11.  $7^{\circ} 25' 30''$  78.86 feet along the Westerly side of Block 25 of the Pearl City Peninsula Lots (Tracts 14 and 15, Portion "Y" of Perimeter Acquisition); thence along the Westerly side of Block 25 of the Pearl City Peninsula Lots (Tracts 15 and 16, Portion "Y" of Perimeter Acquisition), on a curve to the right, with a radius of 380.00 feet, the chord azimuth and distance being:

## Exhibit C—(Continued)

12.  $16^{\circ} 32' 45''$  120.47 feet;

13.  $25^{\circ} 40' 94.20$  feet along the Westerly side of Block 25 of the Pearl City Peninsula Lots (Tracts 16 and 17, Portion "Y" of Perimeter Acquisition); thence along the Westerly side of Block 25 of the Pearl City Peninsula Lots (Tracts 17, 18, 19 and 20, Portion "Y" of Perimeter Acquisition), on a curve to the left, with a radius of 880.00 feet, the chord azimuth and distance being:

14.  $20^{\circ} 10'$  168.69 feet;

15.  $14^{\circ} 40' 31.16$  feet along the Westerly side of Block 25 of the Pearl City Peninsula Lots (Tract 20, Portion "Y" of Perimeter Acquisition) and along U. S. Naval Reservation, Civil No. 515;

16.  $77^{\circ} 24' 89.48$  feet along U. S. Naval Reservation, Civil No. 515 to the point of beginning and containing an area of 60,046 square feet.

2. Aloha Avenue

Beginning at the Southeast corner of this parcel of land, on the Westerly side of Coral Avenue and on the Northerly boundary of U. S. Naval Reservation, Civil No. 515, the coordinates of which referred to Government Survey Triangulation Station "Banning" being 640.52 feet South and 2411.36 feet East, and running by azimuths measured clockwise from true South:

Exhibit C—(Continued)

1.  $77^{\circ} 24'$  394.96 feet along U.S. Naval Reservation, Civil No. 515;

2.  $167^{\circ} 24'$  82.00 feet along the Easterly side of Lehua Avenue;

3.  $257^{\circ} 24'$  436.95 feet along the Southerly side of Block 29 of the Pearl City Peninsula Lots (Tracts 8, 9, 10 and 11, and Portion "Y" of Perimeter Acquisition); thence along the Westerly side of Coral Avenue, on a curve to the left, with a radius of 960.00 feet, the chord azimuth and distance being:

4.  $15^{\circ} 15' 45''$  19.97 feet;

5.  $14^{\circ} 40'$  45.83 feet along the Westerly side of Coral Avenue; thence along the Westerly side of Coral Avenue, on a curve to the left, with a radius of 755.70 feet, the chord azimuth and distance being:

6.  $13^{\circ} 40' 07''$  26.33 feet to the point of beginning and containing an area of 34,085 square feet.

3. Franklin Avenue

Beginning at the Southeast corner of this parcel of land, on the Westerly side of Coral Avenue, being also the Northeast corner of Block 29 of the Pearl City Peninsula Lots (Tract 4, Portion "Y" of Perimeter Acquisition), the coordinates of which referred to Government Survey Triangulation Station "Banning" being 114.48 feet South and 2555.11 feet East, and running by azimuths measured clockwise from true South:

## Exhibit C--(Continued)

1. 77° 24' 650.00 feet along the Northerly side of Block 29 of the Pearl City Peninsula Lots (Tracts 4, 3, 2 and 1, Portion "Y" of Perimeter Acquisition);
2. 167° 24' 82.00 feet along the Easterly side of Lehua Avenue;
3. 257° 24' 650.00 feet along the Southerly side of Land Court Application 912, Parcel B (Tract 2, Portion "W" of Perimeter Acquisition), Kirkbride Avenue and Land Court Application 912, Parcel A (Tract 3, Portion "W" of Perimeter Acquisition);
4. 347° 24' 82.00 feet along the Westerly side of Coral Avenue to the point of beginning and containing an area of 53,300 square feet.

## EXHIBIT D

Descriptions Of Roads Within A Portion Of The  
Pearl City Peninsula Situated At Manananui  
And Waimano, Ewa, Oahu, T. H.

Waikahe Avenue

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Frank L. James—(Owner)

Being Lots 370, 371 and 372 of Land Court  
Application 601

(As shown on Map 6, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=28,195 Square Feet

(See 14th Naval District Drawing  
No. OA-N1-1468)

Exhibit D—(Continued)

Being Waipuna Avenue And A Portion  
Of Beryl Street

Situated at Manananui and Waimano, Ewa,  
Oahu, T. H.

Frank L. James And City And County  
Of Honolulu—(Owners)

Being Lots 366, 367, 368, 403, 2-B-1 and 2-C-1-A  
of Land Court Application 601

(As shown on Maps 5 and 6, filed in the Office  
of the Bureau of Conveyances at  
Honolulu, Oahu, T. H.)

Total Area=70,729 Square Feet

(See 14th Naval District Drawing  
No. OA-N1-1468)

Waieli Avenue

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Frank L. James—(Owner)

Being Lots 343 and 369 of Land Court  
Application 601

(As shown on Map 6, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=22,159 Square Feet

(See 14th Naval District Drawing  
No. OA-N1-1468)

Being A Portion Of Waiauau Avenue  
Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

City And County Of Honolulu—(Owner)

*City and County of Honolulu*

## Exhibit D—(Continued)

Being Lots 1-B-3-A and 390-B of  
Land Court Application 601

(As shown on Maps 6 and 8, filed in the  
Office of the Bureau of Conveyances,  
at Honolulu, Oahu, T. H.)

Total Area=5201 Square Feet

(See 14th Naval District Drawing  
No. OA-N 1-1468

## Waipuilani Avenue

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

City And County Of Honolulu—(Owner)

Being Lots 362, 363, 380, 1-B-9-A and 1-B-10-B  
of Land Court Application 601

(As shown on Map 6, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=41,381 Square Feet

(See 14th Naval District Drawing No. OA-N1-1468)

## Waikai Avenue

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

City And County Of Honolulu—(Owner)

Being Lots 360, 361 and 1-B-14-B of  
Land Court Application 601

(As shown on Maps 6 and 7, filed in the Office of  
the Bureau of Conveyances at  
Honolulu, Oahu, T. H.)



Exhibit D—(Continued)

Total Area=36,771 Square Feet  
(See 14th Naval District Drawing  
No. OA-N1-1468)

Being A Portion Of Beryl Street  
Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

City And County Of Honolulu—(Owner)  
Being Lots 1-B-2-B and 2-A-2, as shown on Map 5  
and Beryl Street as shown on Map 3 and Lot B  
(portion of Farm Street), as shown on Map 8  
of Land Court Application 601

(The above mentioned maps referred to by numbers  
are filed in the Office of the Bureau of  
Conveyances at Honolulu, Oahu, T. H.)

Total Area=48,800 Square Feet  
(See 14th Naval District Drawing No. OA-N1-1468)

Jean Street

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

United Investment Company, Limited—(Owner)  
(As shown on Map 3 of Land Court Application  
601, filed in the Office of the Bureau of  
Conveyances at Honolulu, Oahu, T. H.)

Total Area=40,000 Square Feet  
(See 14th Naval District Drawing No. OA-N1-1468)

Being a portion of Palm Avenue  
Situated at Waimano, Ewa, Oahu, T. H.  
Territory Of Hawaii—(Owner)

## Exhibit D—(Continued)

Being portions of R.P. 4475, L.C.Aw. 7713,  
Apana 47 to V. Kamamalu and Grant 8371  
to M. Elnora Sturgeon

(See 14th Naval District Drawing No. OA-N1-1468)

Beginning at the Southeast corner of this parcel of land, being also the Northeast corner of Block 43 of the Pearl City Peninsula Lots (Tracts S-85 of Perimeter Acquisition) and the Northwest corner of Kirkbride Avenue, the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 1815.07 feet North and 1826.63 feet East, and thence running by azimuths measured clockwise from True South:

1.  $77^{\circ} 24'$  360.00 feet along the North side of Block 43 of the Pearl City Peninsula (Tract S-85 of Perimeter Acquisition);
2.  $167^{\circ} 24'$  62.00 feet along the East side of Lehua Avenue;
3.  $257^{\circ} 24'$  360.00 feet along the remainders of R.P. 4475, L.C.Aw. 7713 to V. Kamamalu (Tracts S-82, S-83 and S-84 and a portion of Q-1 of Perimeter Acquisition) and Grant 8371 to M. Elnora Sturgeon (Portions of Tracts Q-1 and Q-2 of Perimeter Acquisition);
4.  $347^{\circ} 24'$  62.00 feet across Palm Avenue to the point of beginning and containing an area of 22,320 Square Feet.



Exhibit D—(Continued)

Ashley Avenue

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Territory Of Hawaii—(Owner)

Being portions of L.P. 8168, L.C.Aw. 8305,  
Apana 2 to P. Kanoa and R.P. 4475,

L.C.Aw. 7713, Apana 47 to V. Kamamalu

(See 14th Naval District Drawing No. OA-N1-1468)

Part 1.

Beginning at the Southeast corner of this parcel of land, being also the Northeast corner of Block 40 of the Pearl City Peninsula Lots (Tract V-22 of Perimeter Acquisition), the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 1151.45 feet North and 1974.97 feet East, and thence running by azimuths measured clockwise from True South:

1. 77° 24' 360.00 feet along the North side of Block 40 of the Pearl City Peninsula Lots (Tracts V-22, V-21, V-20, V-19 and V-18 of Perimeter Acquisition);

2. 167° 24' 80.00 feet along the East side of Lehua Avenue;

3. 257° 24' 360.00 feet along the Southside of Block 43 of the Pearl City Peninsula Lots (Tracts S-97, S-98 and S-99 of Perimeter Acquisition);

## Exhibit D—(Continued)

4.  $347^{\circ} 24'$  80.00 feet along the West side of Kirkbride Avenue to the point of beginning and containing an area of 28,800 Square Feet.

## Part 2.

Beginning at the Southeast corner of this parcel of land, being also the Northeast corner of Block 39 of the Pearl City Peninsula Lots (Tract V-6 of Perimeter Acquisition) the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 1051.10 feet North and 1526.05 feet East, and thence running by azimuths measured clockwise from True South:

1.  $77^{\circ} 24'$  1142.60 feet along the North side of Block 39 of the Pearl City Peninsula Lots (Tracts V-6, V-5 and V-4 of Perimeter Acquisition), Lowella Avenue, Block 38 of the Pearl City Peninsula Lots (Tracts V-1 of Perimeter Acquisition), Robinson Avenue, Block 37 of the Pearl City Peninsula Lots (Tracts U-1 and U-9 of Perimeter Acquisition) and Laniwai Avenue;

2.  $167^{\circ} 24'$  80.00 feet along the East side of Block 36 of the Pearl City Peninsula Lots (Tracts U-29 of Perimeter Acquisition) and along land owned by the Oahu Railway and Land Company (Tract R-48 of Perimeter Acquisition);

Exhibit D—(Continued)

3. 257° 24' 1142.00 feet along South side of Land Court Application 601 (Tracts R-43, R-44, R-45 and R-46 of Perimeter Acquisition, and along Tracts S-14, S-15, S-16 and S-17, Beryl Street, Tracts S-48, S-49 and S-50, Jean Street and Tracts S-79 and S-80 of Perimeter Acquisition) ;

4. 347° 24' 80.00 feet along the West side of Lehua Avenue to the point of beginning and containing an area of 91,408 Square Feet.

Being A Portion Of Ilima Drive

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Francis Evans and wife Mary C.—J/T—(Owners)

Being Lot 108-B of Land Court Consolidation 16

(As shown on Map 3, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=22,776 Square Feet

(See 14th Naval District Drawing No. OA-N1-1125)

Pikake Way, Loke Way, Melia Way And A

Portion Of Ilima Drive

Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Oahu Beach and Country Homes, Limited—  
(Owner)

Pikake Way

Being Lot 105 of Land Court Consolidation 16

(As shown on Map 1, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

## Exhibit D—(Continued)

Total Area=28,906 Square Feet

(See 14th Naval District Drawing No. OA-N1-894)

## Loke Way

Being Lot 106 of Land Court Consolidation 16

(As shown on Map 1, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=19,813 Square Feet

(See 14th Naval District Drawing No. OA-N1-894)

## Melia Way

Being Lot 107 of Land Court Consolidation 16

(As shown on Map 1, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=44,704 Square Feet

(See 14th Naval District Drawing No. OA-N1-894)

## Portion Of Ilima Drive

Being Lot 108-A of Land Court Consolidation 16

(As shown on Map 3, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area=50,385 Square Feet

(See 14th Naval District Drawing No. OA-N1-894)

April 25, 1946.

WRIGHT, HARVEY &amp;

WRIGHT,

[Seal] By /s/ FRED E. HARVEY,

Registered Surveyor Certifi-  
cate 79-ES.

[Endorsed]: Filed May 31, 1946.

[Title of District Court and Cause.]

APPEARANCE

Comes now Arthur H. Spitzer, Esq., Deputy City and County Attorney, and files an appearance to the amended petition in behalf of the City and County of Honolulu, one of the defendants named in the above entitled cause.

Dated at Honolulu, T. H. this 6th day of June, A.D. 1946.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ ARTHUR H. SPITZER,

Deputy City and County At-  
torney.

[Endorsed]: Filed June 6, 1946.

[Title of District Court and Cause.]

ANSWER OF THE CITY AND COUNTY  
OF HONOLULU

Comes now the City and County of Honolulu, a municipal corporation of the Territory of Hawaii, one of the respondents above named by Arthur H. Spitzer, Esq., Deputy City and County Attorney and by way of answer to the Amended Petition of Petitioner admits and alleges as follows, to-wit:

I.

That it admits the allegations contained in Paragraphs I and II of Petitioner's Amended Petition.

II.

That it has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs III and IV of Petitioner's Amended Petition and therefore leaves said Petitioner to its proof thereof.

III.

Answering Paragraph IV of said Amended Petition, this Respondent alleges that it is the owner of certain improvements and pavement along and upon the roadways as shown and described in Exhibits "C," "C-1," "C-2," "C-3," "C-4," "C-5" and "C-6" and Exhibits "D," "D-1," "D-2" and "D-3" of Petitioner's Amended Petition as well as two (2) concrete bridges over Kaiapo Canal on Waikai and



Waipuiani Avenues in the Venetian Palms Tract (Exhibit "D-3") which said improvements and pavement herein sought to be condemned have cost the City and County of Honolulu large sums of money for construction, maintenance and repair.

Wherefore this respondent prays that it may have a trial of the issues involved in this cause and that upon such trial it may be adjudged to be the owner of the bridges, improvements and pavement above described and that just and fair compensation be made to it for the taking of said bridges, improvements and pavement owned by it; for all losses or damages sustained by reason of such taking; for its costs and for such other and further relief to which it may be entitled.

Dated at Honolulu, T. H. this 29th day of June, A.D. 1946.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ ARTHUR H. SPITZER,

Deputy City and County  
Attorney.

Territory of Hawaii

City and County of Honolulu—ss.

Arthur H. Spitzer, being first duly sworn on oath deposes and says: That he is the duly appointed, qualified and acting Deputy City and County Attorney of the City and County of Honolulu; that he has read the foregoing Answer, knows the contents thereof and that the matters and things stated

therein are true to the best of his knowledge, information and belief.

/s/ ARTHUR H. SPITZER,

Subscribed and sworn to before me this 29th day of June, A.D. 1946.

[Seal] /s/ EMELIA L. KRAMER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission Expires June 30, 1949.

[Endorsed]: Filed June 29, 1946.

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[Title of District Court and Cause.]

### DEMAND FOR JURY TRIAL

Comes now The City and County of Honolulu, one of the defendants herein, by Arthur H. Spitzer, Deputy City and County Attorney, its Attorney, and hereby demands a trial by jury in the above entitled cause.

Dated at Honolulu, T. H. this 1st day of July, 1946.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ ARTHUR H. SPITZER,

Deputy City and County  
Attorney.

Its Attorney.

[Endorsed]: Filed July 1, 1946.

[Title of District Court and Cause.]

## MOTION FOR ORDER AMENDING PETITION

Comes now the Petitioner, the United States of America, by its attorney, Fred K. Deuel, Special Attorney, Department of Justice, and moves this Court for an order that the Petition for Condemnation in this cause be amended by striking from Paragraph III of said Petition the words, "subject to existing public utility easements and all other public utility rights of any nature whatsoever."

That the reason for said amendment is to enable the United States of America to acquire the full fee simple title in the lands being condemned.

Dated: Honolulu, T. H., this 27th day of March 1947.

UNITED STATES OF  
AMERICA,

By /s/ FRED K. DEUEL,  
Special Attorney.

[Endorsed]: Filed March 27, 1947.

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[Title of District Court and Cause.]

## ORDER AMENDING PETITION

Upon motion of the Petitioner, United States of America, appearing by its attorney, Fred K. Deuel, Special Attorney, Department of Justice, it appearing that the Petitioner desires to amend the Petition for condemnation in this cause in order that the full

fee simple title in the lands being condemned may be acquired;

It Is Hereby Ordered that the Petition for Condemnation in this cause be amended by striking from Paragraph III of said Petition the words, "subject to existing public utility easements and all other public utility rights of any nature whatsoever."

It Is Further Ordered that a copy of this Order be promptly served by the United States Marshal upon each of the defendants named. The Marshal is further ordered to post a copy hereof in a conspicuous place on the premises and to forthwith make due return of his said service to this Court.

Dated: Honolulu, T. H., this 27 day of March, 1947.

/s/ L. FRANK McLAUGHLIN,  
Judge of the United States District Court for the  
District of Hawaii.

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#### UNITED STATES MARSHAL'S RETURN

The within Order Amending Petition was received by me on the 27th day of March, A.D. 1947, and is returned duly executed as follows:

Personal service was made upon the following named persons by handing to and leaving with each of them certified copies of the original Order Amending Petition.

On April 2, 1947, upon John H. Wilson, Honolulu, T. H., Mayor, City and County of Honolulu; Ingram M. Stainback, Honolulu, T. H. Governor, Territory

of Hawaii and Frank L. James, Honolulu, T. H.;

Dated at Honolulu, T. H., this 11th day of April,  
A.D. 1947.

OTTO F. HEINE,

U. S. Marshal, District of  
Hawaii.

By GEORGE E. BRUNO,  
Deputy.

Further service by me of the above process on  
April 10, 1947 by posting a certified copy of the  
above process at a conspicuous place upon the prem-  
ises therein described.

Dated at Honolulu, T. H. this 11th day of April,  
A.D. 1947.

OTTO F. HEINE,

U. S. Marshal, District of  
Hawaii.

By /s/ THOMAS R. CLARK,  
Deputy.

[Endorsed]: Filed March 27, 1947.

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[Title of District Court and Cause.]

### DECLARATION OF TAKING

Whereas, pursuant to the authority of the Acts  
of Congress approved March 27, 1942 (Public Law  
507—77th Congress), December 20, 1944 (Public  
Law 509—78th Congress), June 26, 1943 (Public  
Law 92—78th Congress), and June 22, 1944 (Pub-

lic Law 347—78th Congress), the above styled condemnation proceeding has been instituted.

Now, Therefore, pursuant to the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421), I, Secretary of the Navy, do hereby make and cause to be filed this Declaration of Taking, and by virtue of authority thereof do hereby state that the lands covered by this Declaration of Taking aggregate 32.31 acres, more or less, at Pearl City Peninsula, Oahu, Territory of Hawaii, being more particularly described in Exhibit "A" attached hereto and made a part hereof, and as shown on a map entitled "Index Map Navy's Pearl Harbor Perimeter Acquisition," designated as 14th Naval District Dwg. No. OA-N1-1302, attached hereto as Exhibit "B" and made a part hereof.

And I do declare said lands to be taken under the authority of the aforesaid Acts of Congress; that the use to which said lands are to be put is a security strip for the protection of Pearl Harbor and the Naval Reservation as authorized by said Acts; and that the estate hereby taken in said lands for the public use aforesaid is a fee simple title.

And I, Secretary of the Navy, do hereby state that the sum of money estimated by me to be just compensation for said lands and all improvements thereon and appurtenances thereunto belonging is Two Hundred and Two and 00/100 Dollars (\$202.-00), which sum is hereby deposited into the registry of the court for the use and benefit of the persons entitled thereto, and that the names of the owners



of said property and improvements thereon which are hereby taken are shown on Schedule "A" which is attached hereto and made a part of this Declaration of Taking.

I am of the opinion that the ultimate award for the taking of said lands will be within the limits prescribed by Congress.

In Witness Whereof, the Petitioner, by and through the Secretary of the Navy, has caused this Declaration of Taking to be signed in the City of Washington, District of Columbia, this twenty-eighth day of February, 1947.

UNITED STATES OF AMERICA,

By /s/ W. JOHN KENNEY,

Acting Secretary of the Navy.

Schedule "A"

The names of the persons having title to or other interest in the lands described in the within Declaration of Taking, and the amounts estimated to be fair compensation for each respective ownership, including all improvements thereon are as follows:

Parcel	Name of Owner	Acres	Estimated Just Compensation
	Territory of Hawaii.....	26.50	\$ 1.00
	City and County of Honolulu.....	3.75	1.00
P-12	Frank L. James.....	.11	100.00
N-50	Frank L. James.....	1.95	100.00
		<u>32.31</u>	<u>\$202.00</u>

## EXHIBIT A

Descriptions of Roads Within the Pearl City Lots  
(Peninsula Section) Situate at Manana and  
Waimano, Ewa, Oahu, T. H.

[See Exhibit C attached to Petition of Con-  
demnation pages 10 to 30 of this record. The  
first portion of this Exhibit (A) is identical.]

\* \* \*

## Exhibit A—(Continued)

Being a portion of Palm Avenue  
Situated at Waimano, Ewa, Oahu, T. H.

Territory of Hawaii—(Owner)

Being portions of R.P. 4475, L.C.Aw. 7713,  
Apana 47 to V. Kamamalu and Grant 8371  
to M. Elnora Sturgeon

(See 14th Naval District Drawing No. OA-N1,1468)

Beginning at the Southeast corner of this parcel  
of land, being also the Northeast corner of Block 43  
of the Pearl City Peninsula Lots (Tract S-85 of  
Perimeter Acquisition) and the Northwest corner  
of Kirkbride Avenue, the co-ordinates of said point  
of beginning referred to Government Survey Tri-  
angulation Station "Banning" being 1815.07 feet  
North and 1826.63 feet East, and thence running  
by azimuths measured clockwise from True South:

1. 77° 24' 360.00 feet along the North side of  
Block 43 of the Pearl City Peninsula Lots (Tract  
S-85 of Perimeter Acquisition);

Exhibit A—(Continued)

2. 167° 24' 62.00 feet along the East side of Lehua Avenue;

3. 257° 24' 360.00 feet along the remainders of R.P. 4475, L.C.Aw. 7713 to V. Kamamalu (Tracts S-82, S-83 and S-84 and a portion of Q-1 of Perimeter Acquisition) and Grant 8371 to M. Elnora Sturgeon (Portions of Tracts Q-1 and Q-2 of Perimeter Acquisition);

4. 347° 24' 62.00 feet across Palm Avenue to the point of beginning and containing an area of 22,320 Square Feet.

Ashley Avenue

Situated at Manananui and Waimano,

Ewa, Oahu, T. H.

Territory of Hawaii—(Owner)

Being portions of L.P. 8168, L.C.Aw. 8305,

Apana 2 to Kanoa and R.P. 4475, L.C.Aw.

7713, Apana 47 to V. Kamamalu

(See 14th Naval District Drawing No. OA-N1-1468)

Part 1.

Beginning at the Southeast corner of this parcel of land, being also the Northeast corner of Block 40 of the Pearl City Peninsula Lots (Tract V-22 of Perimeter Acquisition), the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 1151.45 feet North and 1974.97 feet East, and thence running by azimuths measured clockwise from True South:

## Exhibit A—(Continued)

1. 77° 24' 360.00 feet along the North side of Block 40 of the Pearl City Peninsula Lots (Tracts V-22, V-21, V-20, V-19 and V-18 of Perimeter Acquisition);

2. 167° 24' 80.00 feet along the East side of Lehua Avenue;

3. 257° 24' 360.00 feet along the South side of Block 43 of the Pearl City Peninsula Lots (Tracts S-97, S-98 and S-99 of Perimeter Acquisition);

4. 347° 24' 80.00 feet along the West side of Kirkbride Avenue to the point of beginning and containing an area of 28,800 Square Feet.

## Part 2.

Beginning at the Southeast corner of this parcel of land, being also the Northeast corner of Block 39 of the Pearl City Peninsula Lots (Tract V-6 of Perimeter Acquisition) the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 1051.10 feet North and 1526.05 feet East, and thence running by azimuths measured clockwise from True South:

1. 77° 24' 1142.60 feet along the North side of Block 39 of the Pearl City Peninsula Lots (Tracts V-6, V-5 and V-4 of Perimeter Acquisition), Lowell Avenue, Block 38 of the Pearl City Peninsula Lots (Tracts V-1 of Perimeter Acquisition), Robinson Avenue, Block 37 of the Pearl City Peninsula Lots (Tracts U-1 and U-9 of Perimeter Acquisition) and Laniwai Avenue;

Exhibit A—(Continued)

2. 167° 24' 80.00 feet along the East side of Block 36 of the Pearl City Peninsula Lots (Tract U-29 of Perimeter Acquisition) and along land owned by the Oahu Railway and Land Company (Tract R-48 of Perimeter Acquisition);

3. 257° 24' 1142.60 feet along South side of Land Court Application 601 (Tracts R-43, R-44, R-45 and R-46 of Perimeter Acquisition, and along Tracts S-14, S-15, S-16 and S-17, Beryl Street, Tracts S-48, S-49 and S-50, Jean Street and Tracts S-79 and S-80 of Perimeter Acquisition);

4. 347° 24' 80.00 feet along the West side of Lehua Avenue to the point of beginning and containing an area of 91,408 Square Feet.

Descriptions of Roads Within a Portion of the  
Pearl City Peninsula Situated At Manananui  
and Waimano, Ewa, Oahu, T. H.

Apparent Owner—City & County of Honolulu, T. H.

Being A Portion Of Waipuna Avenue  
Situated at Manananui and Waimano,  
Ewa, Oahu, T. H.

Being Lots 2-B-1 and 2-C-1-A  
of Land Court Application 601

(As shown on Maps 5 and 6, filed in the Office  
of the Bureau of Conveyances at Honolulu,  
Oahu, T. H.)

Total Area—31,114 Square Feet

(See 14th Naval District Drawing No. OA-NI-1468)

## Exhibit A—(Continued)

Being A Portion of Waiauau Avenue  
Situating at Manananui and Waimano,  
Ewa, Oahu, T. H.

Being Lots 1-B-3-A and 390-B of Land Court  
Application 601

(As shown on Maps 6 and 8, filed in the Office  
of the Bureau of Conveyances, at Honolulu,  
Oahu, T. H.)

Total Area—5,201 Square Feet  
(See 14th Naval District Drawing No. OA-NI-1468)

## Waipuiani Avenue

Situating at Manananui and Waimano,  
Ewa, Oahu, T. H.

Being Lots 362, 363, 380, 1-B-9-A and 1-B-10-B  
of Land Court Application 601

(As shown on Map 6, filed in the Office of the  
Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area—41,381 Square Feet  
(See 14th Naval District Drawing No. OA-NI-1468)

## Waikai Avenue

Situating at Manananui and Waimano,  
Ewa, Oahu, T. H.

Being Lots 360, 361 and 1-B-14-B of Land Court  
Application 601

(As shown on Maps 6 and 7, filed in the Office  
of the Bureau of Conveyances at Honolulu,  
Oahu, T. H.)

Total Area—36,771 Square Feet  
(See 14th Naval District Drawing No. OA-NI-1468)



Exhibit A—(Continued)

Being A Portion Of Beryl Street

Situated at Manananui and Waimano,

Ewa, Oahu, T. H.

Being Lots 1-B-2-B and 2-A-2, as shown on Map 5 and Beryl Street as shown on Map 3 and Lot B (portion of Farm Street), as shown on Map 8 of Land Court Application 601

(The above-mentioned maps referred to by numbers are filed in the Office of the Bureau of Conveyances at Honolulu, Oahu, T. H.)

Total Area—48,800 Square Feet

(See 14th Naval District Drawing No. OA-NI-1468)

Tract 50 Of Portion N

Being Lots 370, 371 and 372 (Waikahe Avenue); (Lots 343 and 369 (Waieli Avenue); Lots 366, 367, 368 and a portion of Lot 403 (portion of Waipuna Avenue) of Land Court Application 601

Situated at Manana-Nui, Ewa, Oahu, T. H.

Beginning at the Northeast corner of this tract of land, being also the Northeast corner of Lot 343 and the Southeast corner of Lot 374 (U. S. Navy Tract 1 of Portion N) of Land Court Application 601, the co-ordinates of said point of beginning referred to Government Survey Triangulation Station "Banning" being 2705.42 feet North and 379.34 feet East, and thence running by azimuths measured clockwise from True South:

1. 333° 22' 345.70 feet along Section 1-B of Land Court Application 945, along U. S. Navy Tract 20 of Portion J;

## Exhibit A—(Continued)

2. 319° 20' 108.10 feet along Section 1-B of Land Court Application 945, along U. S. Navy Tract 20 of Portion J;

3. 68° 48' 5.30 feet along Lot 342 of Land Court Application 601, along U. S. Navy Tract 2 of Portion P;

4. 319° 20' 43.42 feet along Lot 342 of Land Court Application 601, along U. S. Navy Tract 2 of Portion P;

5. 347° 24' 40.00 feet along the remainder of Lot 403 of Land Court Application 601 (remainder of Waipuna Avenue), along U. S. Navy Tract 12 of Portion P;

6. 77° 24' 842.48 feet along Lots 402, 341, 339, 164, 166, 167, 169, 171, 173, 175, 177, 179 and 182 of Land Court Application 601, along U. S. Navy Tracts 47, 38, 37, 36, 34, and 33 of Portion N;

7. 167° 24' 17.50 feet along Lot 181 of Land Court Application 601, along U. S. Navy Tract 32 of Portion N;

8. 77° 24' 141.65 feet along Lot 181 of Land Court Application 601, along U. S. Navy Tract 32 of Portion N;

9. 169° 55' 5.00 feet along the Westerly boundary of Land Court Application 601;

10. 257° 24' 141.43 feet along Lot 143 of Land

Exhibit A—(Continued)

Court Application 601, along U. S. Navy Tract 25 of Portion N;

11.  $167^{\circ} 24'$  17.50 feet along Lot 143 of Land Court Application 601, along U. S. Navy Tract 25 of Portion N;

12.  $257^{\circ} 24'$  797.15 feet along Lots 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 163, 345 and 344 of Land Court Application 601, along U. S. Navy Tracts 25, 26, 27, 28, 29, 30, 31 and 24 of Portion N;

13.  $139^{\circ} 20'$  133.96 feet along Lots 344, 346 and 348 of Land Court Application 601, along U. S. Navy Tracts 24 and 23 of Portion N;

14.  $153^{\circ} 22'$  159.16 feet along Lots 348, 350 and 352 of Land Court Application 601, along U. S. Navy Tracts 23, 22 and 21 of Portion N;

15.  $77^{\circ} 24'$  694.73 feet along Lots 352, 353, 120, 121, 122, 124, 126, 128, 130, 132, 134, 136 and 139 of Land Court Application 601, along U. S. Navy Tracts 21, 20, 19, 18, 17, 16, 15 and 14 of Portion N;

16.  $167^{\circ} 24'$  17.50 feet along Lot 138 of Land Court Application 601, along U. S. Navy Tract 13 of Portion N;

17.  $77^{\circ} 24'$  121.84 feet along Lot 138 of Land Court Application 601, along U. S. Navy Tract 13 of Portion N;

## Exhibit A—(Continued)

18.  $182^{\circ} 41'$  5.18 feet along the Westerly boundary of Land Court Application 601;

19.  $257^{\circ} 24'$  120.48 feet along Lot 101 of Land Court Application 601, along U. S. Navy Tract 2 of Portion N;

20.  $167^{\circ} 24'$  17.50 feet along Lot 101 of Land Court Application 601, along U. S. Navy Tract 2 of Portion N;

21.  $257^{\circ} 24'$  531.26 feet along Lots 102, 104, 106, 108, 110, 112, 114, 116, 118, 119, 355 and 354 of Land Court Application 601, along U. S. Navy Tracts 2, 3, 4, 5, 6, 7, 8, 9 and 12 of Portion N;

22.  $153^{\circ} 22'$  162.10 feet along Lots 354, 356 and 358 of Land Court Application 601, along U. S. Navy Tracts 12, 11 and 10 of Portion N;

23.  $257^{\circ} 24'$  46.38 feet along Lot 374 of Land Court Application 601, along U. S. Navy Tract 1 of Portion N to the point of beginning and containing an area of 84,760 square feet.

## Tract 12 of Portion P

Being a portion of Lot 403 (portion of Waipuna Avenue) of Land Court Application 601

Situated at Manana-Nui, Ewa, Oahu, T. H.

Beginning at the Northwest corner of this tract of land being also the Southwest corner of Lot 342 (U. S. Navy Tract 2 of Portion P), of Land Court Application 601 the co-ordinates of said point of

Exhibit A—(Continued)

beginning referred to Government Survey Triangulation Station "Banning" being 2279.56 feet North and 628.11 feet East, and thence running by azimuths measured clockwise from True South:

1. 257° 24' 128.60 feet along Lot 342 of Land Court Application 601, along U. S. Navy Tract 2 of Portion P;

2. 342° 46' 40.13 feet along Lot 2-C-1-A of Land Court Application 601, along the remainder of Waipuna Avenue;

3. 77° 24' 131.84 feet along Lots 400 and 402 of Land Court Application 601, along U. S. Navy Tract 3 of Portion P, and U. S. Navy Tract 47 of Portion N;

4. 167° 24' 40.00 feet along the remainder of Lot 403 of Land Court Application 601 (remainder of Waipuna Avenue), along U. S. Navy Tract 50 of Portion N to the point of beginning and containing an area of 5209 Square Feet.

[Endorsed]: Filed March 31, 1947.

[Title of District Court and Cause.]

ORDER AND JUDGMENT ON  
DECLARATION OF TAKING

It appearing that on the 8th day of January, 1946, the United States of America filed a Petition for Condemnation of certain lands described and shown on the Exhibits attached to said Petition, that on the 31st day of March, 1946, an Order of this Court was entered amending said Petition for Condemnation by adding thereto certain additional lands, and that on the 27th day of March, 1947, an Order of this Court was entered, further amending said Petition for Condemnation in so far as the estate to be acquired is concerned, and

It further appearing that a Declaration of Taking was filed on the 31st day of March, 1947, signed by W. John Kenney, Acting Secretary of the Navy, declaring taken the lands described in said Declaration of Taking to the extent shown in said Declaration of Taking and in the Exhibits attached thereto as Exhibits "A" and "B"; that the uses of said lands are those described in the Declaration of Taking and in the Petition filed herein as amended, and that the said Declaration of Taking sets forth the estimate of just compensation made pursuant to law, and that contemporaneously with the filing of said Declaration of Taking there was deposited in the registry of this Court for the use of the persons entitled thereto the sum of Two Hundred Two and No/100 Dollars (\$202.00).



It Is Therefore Ordered, Adjudged And Decreed that by virtue of the filing of said Declaration of Taking and the deposit of said money, that the full fee simple title to said lands described in Exhibits "A" and "B" attached to the said Declaration of Taking, be and the same is hereby indefeasibly vested in the United States of America.

It Is Further Ordered that a copy of this Order be promptly served by the United States Marshal upon each of the defendants named. The Marshal is further ordered to post a copy hereof in a conspicuous place on the premises and to forthwith make due return of his said service to this Court.

Dated: Honolulu, T. H., this 31st day of March, 1947.

/s/ J. FRANK McLAUGHLIN,  
Judge of the United States District Court for the  
District of Hawaii.

#### UNITED STATES MARSHAL'S RETURN

The within Order Amending Petition and Order And Judgment On Declaration Of Taking was received by me on the 16th day of April, A.D. 1947, and is returned duly executed as follows:

Personal service was made upon the following named persons by handing to and leaving with each of them certified copies of the original Order Amending Petition and Order and Judgment on Declaration of Taking.

On April 22, 1947, upon Ingram M. Stainback,

Honolulu, T.H., Governor, Territory of Hawaii; John H. Wilson, Honolulu, T.H., Mayor, City and County of Honolulu; Frank L. James, Honolulu, T.H.;

On June 5, 1947, by posting certified copies of the above processes at a conspicuous place upon the premises at Pearl City Peninsula, Oahu, T.H.

Dated at Honolulu, T.H. this 6th day of June, A.D. 1947.

OTTO F. HEINE,

U. S. Marshal District of  
Hawaii.

By /s/ EMMANUEL U. MOSES, Jr.,  
Deputy.

[Endorsed]: Filed April 1, 1947.

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[Title of District Court and Cause.]

### STIPULATION

This cause coming on to be heard this 24th day of March before the Honorable Judge Frank J. McLaughlin and upon the joint motion of the United States of America, Petitioner, the Territory of Hawaii and The City and County of Honolulu, Defendants, through their respective attorneys of record,

It Is Hereby Stipulated by and between the United States of America, Territory of Hawaii and The City and County of Honolulu that the City and

County of Honolulu having the beneficial interest in and to the fee and the improvements of the roads, streets and highways in the Pearl City Peninsula, which roads, streets and highways are included in and the subject of these proceedings entitled "Civil No. 695—United States of America, vs. 34.03 Acres of land, more or less, located at Pearl City Peninsula, Oahu, Territory of Hawaii, City and County of Honolulu; Territory of Hawaii; Frank L. James, et al.," and pending in the District Court of the United States for the District of Hawaii, that for the purposes of said condemnation proceedings, heretofore designated, The City and County of Honolulu shall be deemed to be the owner not only of the beneficial interest in and to the fee and the improvements of said roads, streets and highways, but also the legal owner of the fee and the improvements of said roads, streets and highways and the Territory of Hawaii hereby waives, in favor of The City and County of Honolulu, any right the Territory of Hawaii may have to compensation for the taking of said roads, streets and highways.

It is understood that in joining in this stipulation the United States of America is neither admitting any liability herein nor is it acknowledging or denying title in or to the roads, streets and highways and improvements thereon but is joining herein for the sole purpose of recognizing the agreement between the City and County of Honolulu and the

Territory of Hawaii regarding their respective interests herein.

UNITED STATES OF  
AMERICA,

By /s/ FRED K. DEUEL,  
Special Attorney Department  
of Justice.

TERRITORY OF HAWAII,

By /s/ WALTER D. ACKERMAN, JR.,  
Attorney General.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ WILFRED D. GODBOLD,  
City and County Attorney.

[Endorsed]: Filed March 24, 1948.

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From the Minutes of the United States District  
Court for the District of Hawaii  
Monday, July 11, 1949

[Title of Court and Cause]

On this day at 9 a.m., came Mr. Harry T. Dolan, Special Assistant to the Attorney General of the United States, no defendants being present or represented by counsel. This case was called for trial on the claims of the City and County of Honolulu and the Territory of Hawaii.

Order of Default was ordered against the City and County of Honolulu and the Territory of Hawaii.

Motion to fix the fair value and just compensation for the taking of all streets and highways herein was made by Mr. Dolan, and was granted by the Court in the sum of \$1.00. Order to that effect to be signed upon presentation.

At 9:30 a.m., Mr. Frank A. McKinley, Deputy City and County Attorney, appeared before the Court and requested to be heard.

The request was granted and the order of default as to the City and County of Honolulu and the Territory of Hawaii was set aside by the Court.

Following argument by respective counsel on the claim of the City and County of Honolulu, at 10:10 a.m., Mr. Francis H. Kanahele, Public Lands Executive Officer, Territory of Hawaii, was called and sworn and testified on behalf of the City and County of Honolulu.

At 10:36 a.m., upon the evidence adduced, the Court ruled that in point of law, the Territory of Hawaii was entitled to a nominal value of \$1.00. Exceptions to the court's ruling were noted by the defendant.

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[Title of District Court and Cause.]

#### NOTICE OF SETTLEMENT OF ORDER

To: The Attorney General Territory of Hawaii  
Iolani Palace Honolulu, T. H. City and County  
Attorney City and County of Honolulu City  
Hall, Honolulu, T. H.

Please take notice that there is attached hereto

a proposed order fixing the fair value and just compensation which should be paid for the taking of all streets and highways within Pearl City Peninsula in the above-entitled proceeding, which will be presented for settlement and signature before the Honorable J. Frank McLaughlin, United States District Judge for the above-entitled District, in chambers on the 19th of July, 1949, at 10 o'clock A. M., or as soon thereafter as counsel can be heard.

Dated: Honolulu, T. H., this 12th day of July, 1949.

/s/ HARRY T. DOLAN,

Special Assistant to the At-  
torney General.

[Endorsed]: Filed July 12, 1949.

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[Title of District Court and Cause.]

### ORDER FIXING JUST COMPENSATION

This cause having come on to be heard before this court on July 11, 1949, pursuant to notice of trial dated May 27, 1949, for the purpose of fixing and determining the just compensation which should be paid by petitioner, United States of America, for the taking of all streets and highways within Pearl City Peninsula in the above-entitled proceeding, and the City and County of Honolulu having appeared by Frank A. McKinley, Assistant City and County Attorney, and the Territory of Hawaii not



appearing, and petitioner, United States of America, having appeared by Harry T. Dolan, Special Assistant to the Attorney General, and the court after hearing argument of counsel in connection with the claims of the City and County of Honolulu to substantial compensation and the right to offer proof concerning the theories advanced, and the court having concluded that based upon the great weight of authority and established law that the City and County of Honolulu and the Territory of Hawaii were not entitled to more than nominal damages for the taking of said streets and highways, in the absence of any necessity to create or provide substitute facilities,

Now Therefore, It Is Hereby Ordered, Adjudged And Decreed:

(1) That the fair value and just compensation which should be paid by petitioner, United States of America, to the Territory of Hawaii and the City and County of Honolulu for the taking of the fee title to said streets and highways in the above-entitled proceeding and as described in the petition for condemnation and declaration of taking filed herein, is fixed and determined to be the sum of One Dollar (\$1.00).

(2) That said sum of One Dollar (\$1.00) which was heretofore deposited by petitioner in the registry of this court, may be withdrawn by said Territory of Hawaii or said City and County of

Honolulu, upon proper application therefor and in accordance with rules of this court.

Dated: Honolulu, T. H., this 20 day of July, 1949.

/s/ J. FRANK McLAUGHLIN,  
Judge of the United States District Court for the  
District of Hawaii.

Subject to exception to Court's ruling reserved  
by City and County of Honolulu by Atty. McKin-  
ley.

/s/ J. F. Mc

7-20-49

[Endorsed]: Filed July 20, 1949.

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Territory of Hawaii,  
City and County of Honolulu—ss.

I. Francis H. Kanahele, being first duly sworn,  
depose and state:

That on the 11th day of July 1949, I appeared as  
a witness and gave testimony before the Honorable  
J. Frank McLaughlin, Judge of the United States  
District Court for the Territory of Hawaii, in Civil  
No. 695, being proceedings entitled United States of  
America vs. 34.03 acres of land et al., Defendant;

That in the Transcript Of Proceedings in said  
case, at the bottom of page 37 and the top of page  
38 in said Transcript, appear the following ques-  
tions and answers:

“Q. And you will furnish us with the details,

maps, showing where the areas were, when they were abandoned, the type of property and all the details?

A. We have those records, except that I'd like to correct one word in your statement. The fee is not substantial.

The Court: No, he said where under those circumstances the government either provided an access or substitute road or paid substantial damages to the abutting owners of the abandoned road.

The Witness: That's right. But when we sold those parcels they were not at a substantial price.”;

That the foregoing are the questions put to me when I was on the witness stand and the answers I gave thereto; that the use of the word “substantial” as contained in my answers is incorrect; that the true and correct answers that I should have given to the questions previously recited were:

A. We have those records, except that I'd like to correct one word in your statement. The fee is not at the market value.

\* \* \*

The Witness: That's right. But when we sold those parcels they were not at the market value.;

That I inadvertently used the word “substantial” instead of the phrase “market value”; that the reason for such inadvertence is as follows:

It has long been the practice of the Commissioner of Public Lands in disposing of lands which were formerly encumbered for road purposes, to offer said vacated parcels to the abutting owners at a figure substantially below the market value; the measure of value used by the Commissioner of Pub-

lic Lands in disposing of vacated road parcels to abutting owners is the fair value of the parcel. This practice can best be explained by the use of the following example:

Should the vacated parcel to be disposed of have a 100' frontage and a 10' depth and should the abutting property as well as the property in the immediate neighborhood have an average value of \$1.00 per square foot, the vacated parcel would be offered to the abutting owner at a value of approximately 50c per square foot, or a total consideration of \$500.00 for the 1000 square feet;

That I make this affidavit for the purpose of correcting an inadvertence in my testimony which appears at the bottom of Page 37 and the top of page 38 in the Transcript Of Proceedings in said Civil No. 695; that if given the opportunity to testify again, I would recite the facts as they appear in this affidavit.

/s/ FRANCIS H. KANAHELE.

Subscribed and sworn to before me this 2nd day of September, 1949.

[Seal] /s/ WM. L. EWALIKO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission Expires June 30, 1953.  
No objection.

/s/ FRED K. DEUEL,  
Special Attorney Dept. of  
Justice.

[Endorsed]: Filed September 14, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the City and County of Honolulu hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that portion of the final Judgment of this Court entered in this action on July 20, 1949, determining the fair value and just compensation to be the sum of One Dollar (\$1.00) which should be paid by Petitioner, United States of America, to the Territory of Hawaii and the City and County of Honolulu for the Taking of the fee title to the streets and highways as described in the petition for Condemnation and Declaration of Taking herein.

Dated: Honolulu, T. H., this 14th day of September, 1949.

THE CITY AND COUNTY OF  
HONOLULU,

By /s/ FRANK A. McKINLEY,  
Deputy City and County  
Attorney.

[Endorsed]: Filed September 14, 1949.

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[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That City And County Of Honolulu, a municipal corporation of the Territory of Hawaii, as principal, and United States Fidelity And Guaranty Com-

pany, a corporation organized under the laws of the State of Maryland, as surety, are held and firmly bound unto United States of America, Petitioner, in the sum of \$250.00 for the payment of which well and truly to be made, said City and County of Honolulu, as principal, and United States Fidelity and Guaranty Company, as surety, do bind themselves, their respective successors and assigns, jointly and severally, and firmly by these presents.

The Condition Of This Obligation Is Such That:

Whereas the above bounden principal, City and County of Honolulu, has filed its notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order Fixing Just Compensation entered in the above-entitled cause;

Now, Therefore, if the said principal shall prosecute said appeal with effect and answer all costs if it fails to sustain said appeal, then this obligation shall be void, otherwise it shall remain in full force and effect.

Dated: Honolulu, T. H. this 9th day of September, 1949.

CITY AND COUNTY OF  
HONOLULU,

[Seal] By /s/ JOHN H. WILSON,  
Mayor.

By /s/ LEON K. STERLING, SR.,  
Clerk.



Principal.  
UNITED STATES FIDELITY  
AND GUARANTY  
COMPANY,

[Seal] By /s/ CALVERT G. CHIPCHASE,  
Its Attorney-in-Fact,  
Surety.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 14th day of September, 1949, before me appeared John H. Wilson and Leon K. Sterling, Sr., to me personally known, who being by me duly sworn did say:

That they are the Mayor and Clerk respectively, of the City and County of Honolulu, a municipal corporation of the Territory of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of said City and County of Honolulu; that said instrument was signed and sealed in behalf of said City and County of Honolulu by authority of its Board of Supervisors; that the said John H. Wilson and Leon K. Sterling, Sr. acknowledged the said instrument to be the free act and deed of said City and County of Honolulu.

[Seal] /s/ EMELIA L. KRAMER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1953.

[Endorsed]: Filed September 14, 1949.

In the United States District Court for the  
Territory of Hawaii

Civil No. 695

UNITED STATES OF AMERICA,

Petitioner,

vs.

34.04 ACRES OF LAND, more or less, located at  
PEARL CITY PENINSULA, OAHU, TER-  
RITORY OF HAWAII, CITY AND  
COUNTY OF HONOLULU; TERRITORY  
OF HAWAII; FRANK L. JAMES, ET AL.,

Defendants.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S. Dis-  
trict Court, Honolulu, T. H., on July 11, 1949,  
at 9:00 a.m.

Before Hon. J. Frank McLaughlin,  
Judge.

#### Appearances:

HARRY T. DOLAN, Esq.,

Assistant to the Attorney General, appear-  
ing for the Petitioner;

FRANK A. McKINLEY, Esq.,

Deputy City and County Attorney, Hono-  
lulu, T. H., appearing for the City and  
County of Honolulu.

The Clerk: Civil No. 695, United States of  
America versus 34.03 acres of land. This also was  
called for trial.

Mr. Dolan: Your Honor, this is the tail end of the Pearl City Peninsula case. What I am trying to do is to get some of these files completely closed, even though the matters are of relatively small importance; even though there is something small, the file remains open. And even though the case was for trial, for the purpose of having the Court fix a nominal value for the areas within public streets and highways located within the perimeter of the Pearl City Peninsula, the title to which, the bed of the streets, remaining in the Territory and the beneficial use, management and control being, I believe, in the City and County. The Territory of Hawaii and the City and County of Honolulu were both joined as defendants in the previous setting of this case and notified of the adjournment date to today.

When it was originally set for trial, originally noticed for trial, a representative of the City and County came over and said that the man who was handling it was away on vacation.

The Court: Oh, yes, I remember.

Mr. Dolan: He was back here, I think, the last time this was called, a week or so ago. He said he wanted to look into it a little further and study it. He called Mr. Deuel some time later in the week and told him that he thought that [2\*] the Court had no jurisdiction due to the fact that the title in the beds of those streets and highways was already in the United States Government in the sense that it

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\* Page numbering appearing at top of page of original Reporter's Transcript.

was land that had been ceded to the United States and therefore we already owned it. Of course, we don't agree with that contention because this land within the beds of the streets was not a part of the land publicly ceded to the United States.

Now, strangely enough, I find in the file a stipulation dated the 24th day of March of this year in which the Government joined in a stipulation prepared by the City and County Attorney, signed by the City and County Attorney and the Territorial Attorney General, Walter D. Ackerman, and the purpose of which stipulation was to have an agreement between the Territory and the City and County of Honolulu that for the purpose of this condemnation the Territory would waive any right to title, to any claim for compensation in favor of the County. So we joined in that stipulation without conceding any liability or denying the title to be in either one.

Now, we contend, of course, that it is academic and elementary that regardless of where the title is, whether it is in the City and County, that the compensation can only be nominal in the absence of any necessity to substitute other streets or public ways for these takings. And we know it to be a fact that none of these streets had to be relocated or substitution facilities created. And in the absence of such necessity the courts are unanimous in holding in many recent cases, some of which I tried and which have gone to the circuit courts, that the compensation has to be nominal.

The Court: No question about it.

Mr. Dolan: So I ask your Honor, in the absence of any appearance on the part of the Territory or the City and County today, or any offer of proof that substitute facilities were required, to fix the compensation for the street areas at the nominal sum of one dollar.

The Court: So ordered. You can prepare an order to that effect and I will sign it.

Mr. Dolan: I might call your Honor's attention to the fact, as your Honor already knows, that all of the streets and the public ways within that perimeter were taken except the main street which runs right down the center of the peninsula. That was left.

(A recess was taken at this point.)

#### After Recess

The Clerk: Civil No. 695, United States of America versus 34.03 acres of land.

The Court: In this particular case a few moments ago I entered a default order against the City and County and the Territory. Mr. McKinley has arrived in the meantime stating that this case having been set in his absence, he [4] having been away on vacation, he thought it was at ten o'clock instead of nine. So it would be best to resume consideration of the case, and I will set aside the order heretofore made this morning so you can be heard. Mr. McKinley.

Mr. McKinley: If the Court please, I wish to make a public apology for not being here.



The Court: We all make mistakes.

Mr. McKinley: If the Court please, on the 20th day of March, 1948, a stipulation was entered into by and between the Territory of Hawaii and the City and County on the one hand and the United States Government on the other, whereby it was agreed in substance that the Territory would waive its interest to any compensation in favor of the City and County and that the City and County be deemed to have not only the beneficial interest of the roads and highways located in Pearl City Peninsula but also the legal owner for the purpose of being entitled to any compensation.

With reference to the question of compensation, I wish to state that I am very familiar with the long line of cases and recent line of decisions coming down from the Circuit Court of Appeals, and in many instances where certiorari was denied, and the most recent of those, as I understand, was the United States Government against the State of California. And I do feel that there is a substantial weight of existing decisions against our position, but I have this point in mind [5] and that is the rule enunciated in those cases, that it must be treated only as a generality for the reason that where the economic utilization of land is confined to a use of the land surface, then in the absence of or rather in the presence of a fee being encumbered with an easement in the public for road purposes that easement, if it remains in perpetuity, so obstructs any economic utilization of that fee as to



render the ownership of the fee or the easement of a negative quantity, and therefore it is nominal only. But that being the rule, I think that we have to appreciate it only as a general rule for the reason that were we to assume that there were valuable mineral rights located beneath that surface, or valuable air rights located above the surface, then the condemnation of the fee must take the rest of the assets, economic assets located in that fee, and that would be compensable according to my understanding of due compensation.

Now, then, coming more directly to the point, I quite agree with counsel and I quite agree with the line of cases that the municipality or the state is entitled only to nominal compensation where you have an unencumbered fee and in the absence of other mineral rights or air rights. But let us draw this analogy: Supposing we have a fee that is encumbered by a lease for 99 years, or even a greater term, whereby the rental of that lease is nominal; let us say it would be one dollar a year. Now, that would in substance [6] destroy the economic utilization of that land because the owner of the fee is entitled only to the rental of the lease. But let us change that principle a little bit and say that the fee is encumbered with a lease that is of month to month duration and that lease rental is a nominal one. We must assume, then, that the grantor having the power to disencumber this fee creates then a full and complete title and, as such, is subject to utilization; and we must then determine what is the

highest and best use, and, secondly, what if any market value lies in this use.

Now, I have instructed my witness, the executive officer for the Commissioner of Public Lands, Mr. Francis Kanahele, to come here at ten o'clock, and he is prepared to show that title to these lands lies in the Territory. And he is prepared to show also that on a substantial number of instances the City and County or the Territory has disencumbered this fee where it has been subjected to an easement in the public for road purposes. And with that you have an automatic vesting of this land in the public land pool, let us say, a land pool of the Territory. And as such, the Commissioner of Public Lands is empowered to transfer this disencumbered fee out, and on a substantial number of instances he has transferred this fee out, either for the receipt of money or in exchange of other valuable land.

Now, my point is that the City and County by resolution [7] can vacate these roads, and as such, the fee is disencumbered and the Commissioner of Public Lands can then transfer this land out and it is a free and unencumbered title so far as I know. I think that has been accepted by all the abstractors, too. That is in substance our position.

And I wish to state that I have read those previous decisions, that is, the Circuit Court of Appeals decisions, very carefully with that thought in mind, and not once have the courts therein indicated that that fact, that the owner of the land is in a po-

sition to disencumber the land, that that fact was ever considered by any of these courts, and for that reason I wish to present it to your Honor.

The Court: Well, it is an interesting and rather novel position. Can we not for argumentative purposes assume that what you have said can be substantiated?

Mr. McKinley: I think your Honor can safely do that, because I of my personal knowledge have participated in transactions, exchanges of lands that have been formerly encumbered for land purposes, and we have realized substantial sums of money therefrom.

Mr. Dolan: There is not a case that has been decided that has gone to the circuit courts, decided by the district courts, in which this same theoretical situation that he presents wasn't present or couldn't have been possible. In other words, all public streets or public highways under certain circumstances may be abandoned for public use. But here is a situation where on the date of taking there was no abandonment that had taken place. Everybody in those developments who bought land, came within that area, had the right to use those streets for purposes of ingress and egress. And it is very questionable in my mind under the circumstances whereby a municipality or county or territory or anybody who own the fee title, subject to such servitude, can declare an abandonment of such streets without paying just compensation to the owners of the abutted land. In other words, if land ceases to have any use

as a public street, and there is no occasion or necessity for a street, of course it can be abandoned and closed up. But you have to go through a regular proceeding, an abandonment proceeding in it.

In the City of New York and all cities with which I am familiar, the city just can't come out and take a heavily travelled street in a residential or business or an industrial community, and just because they want to get the fee title back to them so they could maybe sell it to the adjoining property owners to expand an industrial plant deny everybody else the depreciation in value of their property resulting from the closing of that street. And I question it very seriously. Take King Street. If it applies to Pearl City it applies here. Do you mean to say that the City or the Territory or the County could come down here to King Street [9] or Fort Street or Merchant Street and just arbitrarily close up one of those main thoroughfares in order to get the title back into the Territory free from the public servitude and then dispose of the land on the market without paying the abutting owners damages for the closing of that street? I don't believe that that makes sense.

Now, we are valuing this property on the date of taking. On the date of taking these were public streets. There had been no effort made, no possibility, not the remotest thought on anyone's part that the situation might ever develop in the future where these streets might become abandoned. It was a highly developed area. The streets were be-

ing used as public streets. They were beneficial servitude easements in favor of all the people in that area, not only the people in that area but the areas adjoining, as a means of getting into this particular area. Now, we are to value the property as of the date of taking, not at some remote time in the future when some circumstance might develop whereby the abandonment of those public highways might become a practical matter.

Now, there isn't a case that I can think of—and I have tried some of them myself in the circuit court—in which this same theoretical situation might not exist. As a matter of fact, in the last case I tried in the Second Circuit, in which all of these cases were reviewed of other circuits, [10] the lands in the bed of the streets were technically not public streets. They were public marketways, so-called in New York City. They were in an area in which all of the land within this development called “Wall About Market” was owned by the City of New York. They owned about 53 acres of land in fee. They subdivided it into blocks and lots and leased out those blocks and lots to private individuals, corporations, for the purpose of erecting and constructing various commercial properties, each one of those people paying the City of New York a long term lease.

Now, in order to make that area suitable for that sort of use and development to produce that type of income, they had to set aside a certain part of the area for means of access to those various commercial



properties built within those blocks so subdivided. But at no time did the City of New York ever dedicate those marketways to those methods, means of transportation, as public streets. The title to the fee had always remained in the City of New York. On a map filed by the city for the purpose of their won development they laid them out as streets. There was no public dedication of the land as streets. The City of New York tried to make the distinction, in the case that I tried, that due to the fact there had been no public dedication of these areas or the lands within these, in the beds of these so-called streets, no public dedication had been made of them as streets, [11] that a different rule should apply, because they at any time from the expiration of their leases might decide to use it for an entirely different use, in which they could have these buildings torn down and rearrange the development and utilize the land in the bed of the streets.

But we contended that those streets had been opened and used by the public for years, not only as a means of travelling in and around and about this particular development but as a means of the public getting through this area to other areas contiguous and adjacent to it. And the court there made no distinction between that and any other public street, open to the public and being used for street purposes.

The Court: That is a circuit court decision?

Mr. Dolan: That went to the Circuit Court of Appeals in the Second Circuit.



The Court: They made no distinction?

Mr. Dolan: They called them marketways, not streets. And there had been no public dedication of those streets for street purposes. But nevertheless since 1895, since that time, they had been used for street purposes, not only by the people in the development but by people who were passing from the Brooklyn area up through the Williamsburg area and had to pass it. It was the most convenient way to get there, the shortest route to pass through this "Wall About Market" section. [12]

The Court: They just gave it a nominal value and the circuit court affirmed it?

Mr. Dolan: Not only for the value of the land within the street area but also for the pavements and curbs and gutters, for the water system, sewer system—all took the nominal value because they applied the same rule which had been consistently applied that such land, the substantial value of such improvements, was paid for by the Federal Government when they condemned the lots and the property lying adjacent thereto. In other words, we won't pay the same compensation in Pearl City Peninsula for these various lots and parcels of land lying adjacent to these streets and having street access as we would if they were out in the middle of the interior without any road access. The compensation would be much higher if you have street access and a means of transportation to get to your property. If it is on certain types of streets, the better the streets, the more im-

provements in the streets, utilities, and so forth, the higher value would be paid for the adjacent land.

Now, having paid the substantial value, having already been reflected in the value which we paid to the private individuals who owned property abutting those public streets, the only remaining value is a value or compensation which we are only required to pay in the event that the public authorities find it necessary to create a substitute facility in [13] order to connect up highways or streets which are severed by the taking and by which the public have a means of getting around the area condemned.

I think the theory is most fanciful. Talking about the value of minerals underneath, if it is shown that there was oil possibility underneath public roads or the presence of oil or minerals, that it was a known fact, of course the value of those mineral rights might be established. But here we have a case set for trial on the question of just compensation, and all we hear is some theoretical argument about theories, that there is no proof of value that I see submitted here by the City or County or the Territory. If they have any expert witnesses who know of any special value of something lying beneath the beds of those streets, that's a technical problem with proof to be offered and considered.

The Court: How about the value of the air space problem?

Mr. Dolan: Well, I am not familiar with any case that was ever tried, that has ever tried to fix the value of air space over public streets. That would be rather

novel. It is novel to me, what value it has and what value air space has over any land. It is a theoretical and speculative value. I have never tried any one of those cases. As a matter of fact, I can't recall one that has ever been tried. I know there have been cases where by agreement land lying adjacent to airfields, where the Government wanted to control the elevation of the take-off and approach, there has been some agreement worked out with the owners whereby they were paid certain compensation, privilege for the Government removing trees, and hazards, and so forth, and being able to approach the field at a very low level. How they arrived at those values is something I don't know. I think it is probably just a matter of agreement.

But here we have just a lot of fine legal theories, and we might say that the possibility of finding oil and gas being found beneath the surface of the land in Pearl City—that is pretty highly speculative. We have here presented solely the problem of appraising the surface of that land or the fee of that land, subject to public easements. And if there is any case that holds, or ever has been, that they are entitled to more than the public authority entitles, to more than the nominal damages, I am not acquainted with it.

The Court: Mr. McKinley, the argument you have advanced, as mentioned before, is somewhat novel. It does seem to me that there is a possibility which could occur with respect to any public street or road—it must have been reflected upon, at least,

even though not discussed in any of the decisions save and except possibly the one in New York to which Mr. Dolan made reference. But over and beyond that, and assuming argumentatively at least that the Territory has given to the City and County title to the fee underlying this [15] road easement, are you further prepared to put on evidence to establish that the property underneath this road has some peculiar value because of the minerals involved or anything of that sort?

Mr. McKinley: No, your Honor. I cited the instance of the value of mineral rights or valuable air rights, and with reference to air rights I think we will find cases such as the Chicago Lakefront area involving the Illinois Central. But I merely cited those instances to show that the rule was a general rule and subject to exceptions. Now, if we admit that it is a general rule and subject to exception, it would appear to me to be a consequence that in the absence of any of these decisions pointing out that they had considered the fact that this fee could be disencumbered, and in spite of that, that it still has only a nominal value, then in the absence of such a pronouncement by any of these circuit courts—and I will say that I have read the decisions carefully and not in any one have I come upon a point where any part of the decision, where the court has considered that point, in the absence of that, then, we must consider the generality, and we are prepared to show that we can deliver free and unencumbered title, and

we are prepared to show that that title has market value. That in substance is our case.

Now, in reference to Mr. Dolan's statement to the effect that we don't have the authority to deliver a free and unencumbered [16] title, I would like to cite page 70 and page 71 of the Federal Eminent Domain, Lands Division, prepared by the Department of Justice, which reads as follows:

"In many jurisdictions, even when the municipality or county does own the fee, abutters possess easements of light, air, and access to the public street, for the taking of which the United States would have to pay just compensation, though the creation of this property right by the courts has been severely criticized. It is the general rule that an abutting owner has no such right in the maintenance of the status quo as to be entitled to compensation for the closing of a highway; but the rule would be otherwise in most jurisdictions where such closing deprived the owner of all means of access to any highway, sometimes even where the discontinued street, though laid out on maps, had never been opened. Despite a conflict of authority as to whether an abutting owner has a compensable property right in maintenance of the same degree and means of access previously enjoyed, the best considered cases seem to hold that he has not."

Now, in the light of that legal statement I would say that considering our 25,000 lineal feet of roadways which are of substantial width, the City and County



has the opportunity of abandoning portions of those and allowing only trails in the [17] remainder. And the portion that is abandoned the City and County, or the Commissioner of Public Lands, can deliver free and unencumbered title to that portion.

The Court: But you abandon roads in this particular area without the consent and approval and waiver of the owners who bought the lots originally on the strength that they had a right of access.

Mr. McKinley: Well, this last statement here that, "Despite a conflict of authority as to whether an abutting owner has a compensable property right in maintenance of the same degree and means of access previously enjoyed, the best considered cases seem to hold that he has not.

Now, assuming that he would protest, and assuming that protest would be a subject of jurisdiction of the court, citing the authority of Eminent Domain prepared by the Lands Division of the Department of Justice, it would appear that under their own authority we do have the right to shrink, just as we have the right to expand, and when we shrink it, according to our existing law, the title, the free and unencumbered title, vests in the Commissioner of Public Lands to do what in his judgment and the judgment of the Governor and the judgment of the President of the United States——

Mr. Dolan: Your Honor, the last statement he read, the last part of that statement, as to what that means, what is meant by that, is that an owner or property abutting on a public street is not necessarily and always entitled to that same means of access. If



the City or County or whoever owns the fee title to the bed of the street can by taking that particular street afford that owner an equal access, an equally accessible means of ingress and egress to his property, possibly one would offset the other. That is exactly what it says. In other words, he is not entitled always to the same type of a highway or the same means of getting to the property. But you cannot take the only means of access away from him and deny him all access without giving him a substitute, without incurring the obligation to pay just compensation because you are taking the property right away from him.

Now, I know that case after case in New York City, which I am particularly familiar with—I am familiar with the ones in Chicago—but I know many, many street closing cases in New York City where very substantial compensation is paid to the abutting owners for denying them the right of access. And I don't believe that any governmental agency has the right to deprive an abutting owner on public streets of either access or light and air without paying just compensation, as the City of New York pays out millions and millions of dollars every year for the construction of the superhighways which are elevated and which pass right by apartment [19] windows and sometimes cut off light and air and which cause damage due to noise; and the obnoxious character of the traffic passing right by—sometimes it will go right by the second or third story of a big apartment house. And they are paying compensation for such

takings all the time when, as a matter of fact, not one foot of the actual land is being taken upon which that apartment house rests, because they build these superhighways in tiers, that is, they will put a superhighway over an old existing street so that you have traffic flowing below and traffic flowing above. And when they construct those pillars and that roadway which cuts off light and access, creates noise and disturbance, they pay very substantial compensation for it.

Mr. McKinley Let us assume that we have a street out there of 80 feet in width. I think many of them are easily that, some probably wider. In the event the city and county would adopt a resolution abandoning the medial 40 foot strip, allowing 20 feet on each side and some at the intersection to pass from one side to the other, it would be our theory that that would be within the power of the city and county. And accepting these as the authorities for the proposition that the adjoining owner does not have a vested right in the status quo, he has a vested right which can be enforced in my belief to reasonable means of access and reasonable light and air. That is not our contention, to deprive [20] them of the entire thing. We can and we do have the authority to disencumber. Now, another point that Mr. Dolan touch on——

The Court: Before you move on to the other part, perhaps I can understand you a little better. You contend that with respect to the street I live on and you live on, that the city and county would come along

for some cause known as sufficient to itself and decide to change the street on which our houses are located to a cow path without any compensation to the owners of houses along that road?

Mr. McKinley: Well, I will cite you an instance, one that happened up on the Waianae portion of the island. There was a road leading directly down to the ocean, and the automobile traffic in that road was heavy. And finally the Territory shrunk that street down to the point where it prohibited the entry of any motor vehicle down to the street, and the adjoining lands were sold to the abutting owners.

The Court: Well, I don't doubt that, what may be done in rural areas without objection, but the proposition you are contending for would be applicable everywhere, and I can't follow your contention that the city and county has the right to shrink any street here in the city, for example, without having to pay damage, just compensation to property owners who are affected detrimentally by the shrinkage.

Mr. McKinley: In that case, in the event of special damage, but not general damage. [21]

The Court: Well, I'd like to have you try it on the street I live on.

Mr. Dolan: You can't enlarge them without paying the adjoining owners and I doubt if you can shrink it. But aren't we dealing entirely with a lot of theory and speculation?

The Court: I am afraid we are. I was coming to that.

Mr. McKinley: I was trying to make this point clear, that Mr. Dolan referred to a little earlier, that in the absence of proof, and so on, it was my understanding that the setting this morning was on the question of determination of the law. And in the event that your Honor concludes that even as a point of law, together with an offer of proof, that we can deliver free and unencumbered title, and in the absence of proof that title has substantial value, then we are entitled to no more. But in the event that we make such an offer, then I understand that our opportunity of presenting the proof will be at a later date.

The Court: I see that your witness has arrived. Well, I will hear your witness. He is going to testify to the fact that you can deliver a free and unencumbered title?

Mr. McKinley: Yes, your Honor.

The Court: All right. Let me hear him now.

Mr. Dolan: Your Honor, this was set down and notice made back in May for the issue of just compensation. It is not on legal theory. It is a purpose of offering proof of [22] value. Of course, the law comes into the determination. This is the time, if they want to offer proof of value, that they have an opportunity to do it. We didn't set it down on motion or a demurrer or question of law.

The Court: That's right. It is set for trial.

Mr. McKinley: Well, if you want to become technical, we have a demand for a jury trial in here, and we have not been afforded an opportunity to pick a

jury. I was in your office the other day and told Mr. Deuel my understanding, that in view of the nature of this hearing, it was in the nature of a hearing to determine whether we had any substantial value or nominal value and having determined that then we would be in the position, or rather in the event that it was nominal there would be no trial. In the event it was substantial, we would be given an opportunity to show the extent and degree.

Mr. Dolan: Your Honor, I'd like the record to also show that despite the stipulation that has been referred to of March 24, 1949, I believe it is, although the year doesn't seem to appear on it—I imagine it is this year because there is a stamp on it, March 24—no, it must be '48—the stipulation says that it is the 24th day of March, it doesn't say the year.

The Court: 1948.

Mr. Dolan: I'd like the record to show that as far as the Government is concerned, we do not recognize the validity of this stipulation to transfer any legal title owned by the Territory of Hawaii to this land to the City and County of Honolulu, nor do we concede that such a stipulation has the legal effect of transferring any legal title to the bed of those streets to the City and County of Honolulu, or that the effect of the stipulation or that the legal effect of the stipulation would be to vest in the City and County any rights to compensation or any rights to be heard on the question of compensation for the value of the fee if it was owned by the Territory of Hawaii.



The Court: Well, that may be recorded, as it is, of course. And you are technically right, that this case is set for trial. But I will handle it, in the event that I find that the City and County has an interest, I will continue it for trial. I will hear your legal proof this morning.

Mr. McKinley: Thank you, your Honor.

The Court: Call your witness.

FRANCIS H. KANAHELE

a witness in behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: Francis H. Kanahele, 53 years old, Public Lands Executive Officer, Territory of Hawaii.

The Court: You live here in Honolulu? [24]

The Witness: All my life.

The Court: You are a citizen of the United States?

The Witness: I am.

The Court: Exclusively, only?

The Witness: Only.

The Court: All right.

The Witness: Maybe we have a dual citizenship in that we have a Hawaiian flag, but it is only temporarily or——



(Testimony of Francis H. Kanahele.)

The Court: All right. Mr. McKinley.

By Mr. McKinley:

Q. What is your occupation, Mr. Kanahele?

A. I am the Executive Officer of the Public Lands Office; in the absence of the Commissioner of Public Lands, I serve in his place.

Q. That is a Territorial Commissioner?

A. That is Territorial Commissioner of Public Lands.

Q. And how long have you been so employed?

A. About a year. I may add, however, that for 25 years prior to that I was very much in connection with the Land Office because of my former status as a government surveyor.

Q. For the purposes of the record, the function of the Commissioner of Public Lands is to keep track of all the lands owned by the Territory and with reference to their being appropriated to certain uses? [25]

A. That is right.

Q. And in certain instances the Commissioner receives title for the Territory and in certain instances the Commissioner deeds title out and conveys out, that is, as an officer of the Territory?

A. He is a person instrumental in the transfer or in the receipt, only, however, in the name of the Territory; never in his name.

Q. I see. Mr. Kanahele, are you prepared to cite instances to the Court whereby the Commissioner of Public Lands in the name of the Territory has executed deeds of land which were at one time public

(Testimony of Francis H. Kanahele.)

streets, highways and roads, the consideration of which was substantial?

A. I do not know of any specific case but there are numerous on record.

Mr. McKinley: I want to apologize to the Court. I wrote a letter to the Commissioner of Public Lands in which I requested that he be prepared to cite specific instances, and I must confess that in the absence of not having talked to the witness before—I was taken a little aback there. But I just don't know what to say except that whether in the event that counsel will not agree that we are in a position to cite specific instances that we be given a short opportunity to assemble these specific instances for the purpose of entering them in the record. [26]

Mr. Dolan: Well, your Honor, I know as a matter of fact that such a thing can be done, no doubt about that. That is academic. You don't need to cite examples. The circumstances under which streets are abandoned and made available for sale by municipality or counties or states is the thing we are interested in, not particularly the thing that it can be done. We know it can be done. But the circumstances surrounding what were the conditions of the abutting property, whether these streets had ceased, the areas had ceased to be used for public streets, whether substitute facilities had been created which rendered their abandonment necessary or justifiable—all those things are what we have concern with here, not the mere fact, the mere academic question of whether it can be done.

(Testimony of Francis H. Kanahele.)

The Court: Well, apparently this is as far as the witness is currently prepared to go.

Mr. Dolan: I'd like to examine him a bit, your Honor, if I may, up so far as we have gone.

The Court: All right. Are you through with him or did you have some other subjects to cover?

Mr. Dolan: Did you have anything further on these instances?

The Court: In other words, I was about to say, I will assume that you could cite specific instances.

The Witness: Yes [27]

Mr. McKinley: Then I am finished with the witness, your Honor.

The Court: All right.

### Cross-Examination

By Mr. Dolan:

Q. Are all of the lands within the bed of public streets in the City and County of Honolulu, are all of those lands owned in fee simple by the Territory?

A. They are.

Q. What interest does the City and County of Honolulu have in those streets, what interest?

A. As a creature of the Territory they are responsible for the maintenance and further carrying on of their utilities.

Q. In other words, the title, the fee title and all interest, legal interest in the lands, it is in the Territory?

A. That's right.

Q. But the burden of maintaining those streets and the use of the streets is vested in the City and County?

A. That is right.

(Testimony of Francis H. Kanahele.)

Q. Now, are the lands within the beds of public streets in the City and County of Honolulu public lands?

A. They are not. They have a peculiar feature. They only become public lands after the order rendering it abandoned.

Q. So up until the time that there is official action taken whereby areas within public streets are officially [28] abandoned and no longer used for public streets——

A. They become public lands.

Q. ——then from that time on they become public lands?      A. That's right.

Q. What do you mean by public lands?

A. Public lands are lands that come under the control of the Commissioner of Public Lands under Section 73 of the Organic Act.

Q. Well, now, is there any distinction between—strike that. What lands, if any, are the fee title in the Federal Government subject to control, use and management by the Territory?      A. All land.

Q. All land?

A. Except privately granted. All government lands except privately granted are Federal lands.

Q. In other words, the lands, the beds of these public streets that we are discussing here, are in the Federal Government, subject to use, control and management by the Territory?

A. The Federal Government has already dedicated that usage to the Territory.

Q. In all the public streets?

(Testimony of Francis H. Kanahele.)

A. That's right.

Q. By what law? [29]

A. By the Organic Act.

Q. By the Organic Act? A. That is right.

Q. What section is that? A. Section 73.

Q. Now, isn't it a fact that by Section 73 of the Organic Act it was expressly provided that the public lands excluded lands which were used for street purposes and those lands never became vested in the Federal Government when lands of the Territory were ceded to the Federal Government?

A. The use—the quotation would be ambiguous if it were so, because——

Q. Now, isn't it a fact that there was a time prior to August 15, 1895 when all of the land in the Territory was either owned by the Government or the Crown? A. That's right.

Q. Then by a cession certain lands were called public lands and ceded by the Crown or the Government to the United States? A. That is right.

Q. And that took place about 1895?

A. 1898.

Q. Well, now, isn't it a fact that when that took place lands within public streets were not included but expressly excluded and did not pass to the Federal Government [30] as public lands?

A. It could not have been excluded.

Q. Well, isn't it a fact that the act expressly says it is excluded?

A. In section 2 there is, rather in paragraph 2 of Section 73——



(Testimony of Francis H. Kanahele.)

Q. Paragraph 3 you mean?

A. Yes, paragraph 3. I beg your pardon. It implies that. But on the next breath it gives it to the Territory for its usage.

Q. Well, now, what next breath? In another paragraph or in another section or by some other law or what, or in this same paragraph?

A. In the same paragraph it implied that.

Q. Well, now let me get your position straight. If your position is correct, the fee title to the lands in the beds of these streets in this proceeding on the date of taking so-called in this proceeding, the proceeding was instituted and the declaration of taking filed, on and prior to that time the fee title to the lands in the beds of these streets involved in this condemnation proceeding was already in the Federal Government subject to use, control and management and supervision by the Territory and by a later delegation to the City and County?

A. No, I think that needs a little clarification. Under 91——

Q. All right. Go ahead.

A. ——all lands turned over that were of government status at the time were fee in the Federal Government. Under 73, however, there is a little different application. Certain ones may be bought by Territorial or agencies created by the Territory. In my lay view of it, is that they should only buy in the name of the Territory.

Q. Do you know—pardon me, are you through?



(Testimony of Francis H. Kanahele.)

A. Yes.

Q. Do you know when the fee title to the bed of these streets within the Pearl City Peninsula was acquired by the Territory or by the Crown or by whoever acquired it? I mean when they started, devoted it to street purposes.

A. The O. R. and L. owned it.

Q. Owned it in fee? A. That's right.

Q. And who bought it for them or condemned it or how was it acquired and by whom so that it could be converted from private ownership to use as public streets?

A. It was turned over to the Territory.

Q. By whom? A. By the O. R. and L.

Q. They subdivided that entire area, didn't they?

A. That is right [32]

Q. And dedicated certain areas on a filed map for use by public streets, for use by the public as streets for means of ingress and egress? Right?

A. That's right.

Q. Now, did they actually convey it or did they retain fee title subject to the use by public, by the public for dedication?

A. They actually conveyed the fee.

Q. By deed? A. By deed.

Q. Or by a filed map?

A. By deed and map, I should think.

Q. And that deed went from the O. R. and L. Company to whom—the Territory?

A. I couldn't state positively now whether it was

(Testimony of Francis H. Kanahele.)

the Territory or County. But be it the County, it would be just the same implied that the Territory is the owner.

Q. Well, wouldn't it be true, though, that if that land was so acquired by the Territory, it never was public land in the sense that it was owned by the Federal Government and never been ceded, having been acquired? Supposing it was acquired subject to the cession in 1895, and it was acquired from the O. R. and L. either for a substantial or nominal consideration by the Territory. The United States Government never had any beneficial use or any right, title or interest [33] in the land in the bed of the streets. Wouldn't that necessarily follow?

Mr. McKinley: If the Court please, I'd like to make an objection. I think that the present examination is going beyond the purview of the direct. The point hasn't been raised by us. It is a condemnation. And our position is that the fee is in either the Territory or the City and County, that is, depending on the effect that your Honor attaches to the stipulation. In the event that the fee were by deed to the City and County automatically by the provision of law the title would evolve to the Territory. So we are entering into a question which I think is outside the purview——

The Court: Well, I think that is Mr. Dolan's position, too, isn't it?

Mr. Dolan: Well, I contend that this stipulation, why it was prepared or entered into, obviously some

(Testimony of Francis H. Kanahele.)

deed between the Territory and Attorney General's Office and City and County Attorney, and so on, has no effect other than transfer any rights to share in the compensation from one to another. But it certainly doesn't affect the basic principle as to where the title was.

The Court: You aren't contending that the Federal Government has the basic fee as he suggested?

Mr. Dolan: I am not contending that but I understood from Mr. Deuel that that was exactly Mr. McKinley's position as discussed with him on the telephone the other day. Mr. Deuel isn't here but it was related to me that Mr. McKinley's position was that this land already was owned by the Federal Government and he was going to move to dismiss the proceeding as to the taking of these streets on the ground that we already own it, that the Court had no jurisdiction. Now he seems to be in an entirely different position.

The Court: Well, there is some misunderstanding. Anyway, the witness is suggesting the idea that maybe the Federal Government already had the fee. But I think you have pointed out to him wherein both you and Mr. McKinley are in agreement that being acquired directly from a private ownership the title is exclusively now in the Territory.

Mr. Dolan: Well, I'd like to get this answer. He is in charge of the land office. I'd like to get his views on it, not so much from the legal as the factual background; upon which the Court can make a determina-

(Testimony of Francis H. Kanahele.)

tion, because it is a judicial question anyhow. I would like to explore it just a little bit more for my own enlightenment and possibly for the enlightenment of the Court.

The Court: Well, let me ask him a question first. What I have just said, is that your view, that being after acquired property, after the date of the Organic Act, this deed of O. R. and L. to the City and County placed the title of these streets in the Territory as a matter of law? [35]

The Witness: That is right.

Q. (By Mr. Dolan): Well, now, isn't it a fact historically that the title which passed to the Territory from O. R. and L. was subsequent to 1895?

A. That is also right.

Q. Are you sure of that? Are you sure that that development didn't take place prior to the cession of land to the United States Government?

A. The law at that time had the same effect except the time of transfer is of a different date.

Q. Well, now, aren't we getting back to my original position that even had this transfer historically taken place prior to 1895 from O. R. and L. to the Territory or to the Crown or to the Government or what, even had that been a fact, the cession, public land from the Government of the Crown to the United States, that it excluded street areas, areas used for public highways and streets and which, if true, would under no circumstances or on either set of circumstances having been acquired prior to 1895

(Testimony of Francis H. Kanahele.)

or subsequent, never became vested in the Federal Government?

A. Well, I only have a layman's view of it, and I cannot give you the legal aspects. I really think that all streets are Territory.

Q. Without any right in the Federal Government? [36]

A. Without any right of the Federal Government.

Q. There are certain types of land which are owned by the Territory in which the Federal Government has no interest?

A. Yes.

Q. And there are other types of land in which the Territory has no interest?

A. Provided, however, that that condition was prior to 1898. Then the Federal Government would come into the picture. But subsequent to 1898 it is a rather different aspect, as I see it, from a layman's point of view.

Q. Well, now, do you know of any instances where public streets, land used for highway purposes within residential, commercial or industrial areas, have been abandoned for public streets and sold for a substantial consideration, where no substitute facilities or access was provided or damages were not paid to the abutting owners?

A. There are numerous on the books.

Q. And you will furnish us with the details, maps, showing where the areas were, when they



(Testimony of Francis H. Kanahele.)

were abandoned, the type of property and all the details?

A. We have those records, except that I'd like to correct one word in your statement. The fee is not substantial.

Clerk's Note: For affidavit of Kanahele correcting use of word "substantial" see page 66)

cess or substitute road [34] or paid substantial damages to the abutting owners of the abandoned road.

The Witness: That's right. But when we sold those parcels they were not at a substantial price.

Q. You sold them to the abutting owners?

A. That's right.

Q. Who would be the only market for such parcels?

A. No, not necessarily. The law says that we first offer it to the abutter.

Q. They have a preference?

A. They have first preference.

Q. Can you imagine who would be wanting to buy those narrow strips after abandoned roads other than the abutting owners, what you could use them for? A. Yes, they can——

Q. Well, what access would you have to them? How would you get to them to use after you sold them off and they had no means of access?

A. Access, however, is always invariably, rather there from one extremity of the road.

Q. Most of these cases were dead-end streets



(Testimony of Francis H. Kanahele.)

or something where they weren't built up around them?

A. That's right. But one end of it would always be accessible.

Q. What is the procedure for public street abandonment? [38] What do you do? Do you have a public street which is being used by the public which the public hasn't abandoned, the public is using it, and the abutting owners are using it as a means of getting to their residences or their business, but the Territory decides they want to legally revoke the public use of that land for highway purposes and close off the street, what we call back east a street-closing proceeding?

A. That is your version.

Q. I am trying to get what your version is and how you do it.

A. This is how we do it: first the abutters are contacted to see if they are interested in abandoning that particular piece of land or parcel of road; then the Board of Supervisors act on that phase; if they are willing to abandon it and be served by another road, they will so indicate and the Board then acts on abandoning that portion because of the new facilities that will be able to serve the same individuals by some other route.

Q. And supposing no substitute facilities are being created, no new facilities are in mind, and the abutting owners say, No, we are not going to con-

(Testimony of Francis H. Kanahele.)

sent to have this street closed off and have no access to our property, what then would take place?

A. Then I don't think the Board of Supervisors will abandon it. [39]

Q. Then providing the owners are being furnished with a substitute facility and they are agreeable to abandoning it, then you have an abandonment proceeding? A. That's right.

Q. And is there any compensation paid to anyone then?

A. It may be in kind. By that I mean——

Q. The creation of a substitute, giving them a substitute?

A. A substitute may be far better in advantage and so forth.

Q. Well, now, supposing this street—do you know of any instances where a street is served, that is, leaving the termini unconnected and this street not only serves the abutters within the area where you want to abandon it, the particular segment that you want to abandon, but also serves other communities lying adjacent and beyond, and then you have to get the consent of all the people that are served by that highway, don't you?

A. No, only the abutters.

Q. Well, now, supposing King Street down here between where it adjoins Kalakaua Avenue and then down here where it intersects—what is the next street it intersects down here?—well, that runs clear on through the city, doesn't it? A. Yes.

(Testimony of Francis H. Kanahele.)

Q. Well, supposing you wanted to abandon a segment [40] of King Street up here for about two blocks as it approaches Kalakaua Avenue. Now, that street serves people Ewa, so to speak, and Waikiki, so to speak, not only the people abutting on it. A. That is very true.

Q. So that those people, the rest of the public served by those streets, have an interest in those streets for access? A. They have.

Q. As well as the abutting interest?

A. They have an implied interest.

Q. And to a certain extent the value of their land abutting on that street is determined to some extent even though the land lies without the particular segment you want to abandon——

A. It is a very remote value that they have.

Q. You think it is remote, that the public street system of a city is remote in the element of value reflected in all of the land in commercial, business and residential areas?

A. No, I don't mean that. I mean those that are away from the abutting sections.

Q. Providing they had other means of access, it would be all right? A. That's right. [41]

Mr. Dolan: All right. Thank you very much. It has been very interesting to me, if it hasn't been much to the Court.

The Court: Mr. McKinley, any questions?

(Testimony of Francis H. Kanahale.)

Redirect Examination .

By Mr. McKinley:

Q. Mr. Kanahale; the streets, the subject matter of this condemnation, lying as they do below O. R. and L., are not arterial highways in the sense they serve other communities and the communities approaching the Pearl City Peninsula?

A. That's right. They are dead-end streets.

Q. Now, upon the hypothetical situation of a cul-de-sac network of streets comparable to the network of streets in the Pearl City Peninsula, upon the assumption that those streets are in average 80 feet in width; upon the further assumption that the Board of Supervisors adopted a resolution abandoning portions of those streets, the medial portion consisting of 40 feet, leaving a 20-foot lane on each side of it, would your office, the Commissioner of Public Lands, have the power to deliver free and unencumbered title to that portion of the network abandoned by the resolution of the Board of Supervisors? A. That is right.

Mr. Dolan: That is purely an assumption, of course; that is purely a legal assumption on his part. [42]

Mr. McKinley: Beg your pardon?

Mr. Dolan: Of course, that is purely a legal assumption on his part.

Q. (By Mr. McKinley): Are you prepared to cite specific instances whereby the City and County of Honolulu, the Board of Supervisors, has by

(Testimony of Francis H. Kanahele.)

resolution abandoned portions of public highways and your Commissioner of Public Lands by virtue of his office has conveyed that property out for a substantial consideration either by way of exchange of other land or receipt of money?

A. There are numerous instances that I could cite if given the chance to.

Recross-Examination

By Mr. Dolan:

Q. The fact remains that when this peninsula, Pearl City, was taken by the Government, there had been no abandonment proceedings instituted or anticipated on these streets as far as you know?

A. That is right.

Q. These streets were dead-end streets in the sense that when you get to the end of the peninsula or either side of it, you run into water, but they weren't dead-end streets in the sense that people in Honolulu couldn't get down through Pearl City in those streets? They served the communities lying to the north of the peninsula as a means of access into [43] the peninsula area?

A. Into the peninsula area.

Q. Isn't it a fact that some of the lands which were dedicated for public streets within that Pearl City Peninsula were dedicated by owners of land who subdivided it, developed it after the O. R. and L.'s original subdivision?

A. That is right.

Q. Do you know whether those people who so dedicated certain street areas ever actually con-



(Testimony of Francis H. Kanahele.)

veyed the fee title to the bed of the streets to the Territory?      A. Not to the Territory.

Q. Did they convey it to anybody?

A. It rested with them.

Q. The fee title remained in them subject to public easements of ingress and egress?

A. That's right.

Q. How much of the area of the streets within the Pearl City Peninsula was in that category?

A. That were not conveyed, a very small percentage.

Q. By "very small percentage" what do you mean?

A. Oh, I imagine it would be within one or two per cent.

Q. Of the total area?

A. Of the total area.

Mr. Dolan: I think that's all.

The Court: All right. I see no need of continuing [44] this matter to allow the witness to provide specific illustrations of abandonment of public ways, for definitely they would be instances which would have to be individually explored to find the various reasons and the methods in which they were handled.

The contention advanced by the City and County, as I have said, is novel and ingenious. If there was some offer to prove that under this particular road there was some valuable mineral or that there was some valuable air right above it, I might give it



more time. But on the proposition that in point of law under certain circumstances the Territory might be able to get back unencumbered fee which it could sell, that is not to my mind warranting a conclusion that therefore the Territory is entitled to more than the nominal value for its fee, subject to a road easement. The ifs and so forths would have to be explored before arriving at a conclusion that the Territory could do as the City and County Attorney contends.

In the absence of specific data showing that it was done in this instance gets us into the field of speculation. The important fact is that as of the date of this taking this road had not been abandoned. It was a public highway or road; more precisely, an area of land the fee to which was owned by the Territory subject to a public easement for highway and road purposes. And that is the condition under which [45] it was taken and it is in that condition that the Government must pay for it, not what the City and County and the Territory might have done under different circumstances or rather different date.

I am, therefore, going to hold that in point of law, the weight of authority to the effect that under such circumstances the public body is entitled to only nominal value, is the rule which is applicable here. Accordingly, that being the rule, I will award the Territory the nominal value of one dollar for this public way which has been taken for the fee underlying that public way rather, and that being

the ruling of the Court in point of law there is no need of continuing the matter for the introduction of specific evidence on the point that Mr. Kanahele said he could furnish for the illustrations of it.

Mr. McKinley: If the Court please, if I may be permitted I would like to take an exception.

The Court: Yes.

Mr. McKinley: Upon our offer to present evidence that the Territory has the power and capacity to deliver free and unencumbered title to these roads and ways for a substantial——

Mr. Dolan: May I ask the county attorney to state as a matter of record whether or not he has any proof available or would propose on any further hearing to submit any evidence [46] that as a result of the taking of these public street areas within the Pearl City Peninsula the City and County of Honolulu or the Territory of Hawaii was required to build at its cost and expense any substitute streets or highways to replace those taken?

Mr. McKinley: In all candor I will say that we have considered that aspect and the answer is negative, that the city feels it is under no necessity to build substitute roads.

The Court: I have been out there and seen the area and I know that as a fact, too.

Mr. Dolan: And, your Honor, I'd like the record to show, as I did state at the earlier hearing, that we did leave the main highway running through the center of the peninsula as a public street, and it still is being used.

The Court: All right. You may submit an order for the Court's signature based on the ruling.

(The Court adjourned at 10:36 a.m.) [47]

I, Albert Grain, Official Court Reporter, U.S. District Court, Honolulu, T.H., do hereby certify that the foregoing is a true and correct transcript of proceedings in Civil No. 695, United States of America versus 34.03 acres of land, et al., held on July 11, 1949, before the Hon. J. Frank McLaughlin, Judge.

/s/ ALBERT GRAIN.

Aug. 15, 1949.

[Endorsed]: Filed August 15, 1949. [48]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii.—ss:

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings of record in said cause:

Petition for Condemnation.

Appearance (Territory of Hawaii).

Appearance (City and County).

Order Amending Petition.

Appearance (City and County).

Answer of the City and County of Honolulu.

Demand for Jury Trial.

Motion for Order Amending Petition.

Order Amending Petition.

Declaration of Taking.

Order and Judgment on Declaration of Taking.

Stipulation.

Notice of Settlement of Order.

Order Fixing Just Compensation.

Affidavit of Francis H. Kanahele.

Notice of Appeal.

Bond for Costs on Appeal.

Designation of the Contents of the Record on Appeal.

I further certify that included in said record on appeal is a copy of the transcript of proceedings of July 11, 1949.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of September, 1949.

[Seal]     /s/ WM. F. THOMPSON, JR.,  
Clerk, United States District Court, District of  
Hawaii.

[Endorsed]: No. 12376. United States Court of Appeals for the Ninth Circuit. City and County of Honolulu, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed October 10, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 12376

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
vs.

34.03 ACRES OF LAND, more or less, located at  
Pearl City Peninsula, Oahu, Territory of Ha-  
waii, CITY AND COUNTY OF HONOLU-  
LU; Territory of Hawaii, FRANK L. JAMES,  
et al.,

Defendant-Appellant.

STATEMENT OF POINTS ON APPEAL

Now comes the City and County of Honolulu, Appellant in the above entitled case, and specifies the following statement of points to be relied upon on appeal:

1. The Court erred in determining the fair value and just compensation to be the sum of only One Dollar (\$1.00) which should be paid by Petitioner, United States of America, to the Territory of Hawaii and the City and County of Honolulu for the taking of the fee title to the streets and highways as described in the Petition for Condemnation and Declaration of Taking herein.

2. The Court erred in not allowing the value of said property to be awarded by a jury.

Dated at Honolulu, T.H. this 27th day of September, 1949.

Respectfully submitted,

CITY AND COUNTY OF  
HONOLULU,

By FRANK A. McKINLEY,  
Deputy City and County  
Attorney.

Receipt of a copy of the within Statement is hereby acknowledged this 27th day of September, 1949.

FRED K. DEUEL.

[Endorsed]: Filed October 10, 1949.



[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD  
TO BE PRINTED

Now comes the City and County of Honolulu, defendant-appellant in the above entitled case, and designates for inclusion in the printed record on appeal the following:

1. Petition for Condemnation, filed January 8, 1946;
2. Appearance of the Territory of Hawaii, filed January 10, 1946;
3. Appearance of the City and County of Honolulu, filed January 16, 1946;
4. Order Amending Petition, filed May 31, 1946;
5. Appearance of the City and County of Honolulu, filed June 6, 1946;
6. Answer of the City and County of Honolulu, filed June 29, 1946;
7. Demand for Jury Trial, filed July 1, 1946 by the City and County of Honolulu;
8. Motion and Order Amending Petition, filed March 27, 1947;
9. Order Amending Petition, filed March 27, 1947;
10. Declaration of Taking, filed March 31, 1947;

11. Order and Judgment on Declaration of Taking, filed April 1, 1947;

12. Stipulation, filed March 24, 1948;

13. Minutes of Court (entering proceedings—default entered City and County of Honolulu), filed July 11, 1949;

14. Notice of Settlement of Order, filed July 12, 1949.

15. Order Fixing Just Compensation, filed July 20, 1949;

16. Reporter's Transcript, filed August 15, 1949;

17. Kanehele's Affidavit, filed September 14, 1949;

18. Notice of Appeal, filed September 14, 1949;

19. Bond, filed September 14, 1949;

20. Statement of Points on Appeal.

Dated at Honolulu, T.H. this 27th day of September, 1949.

Respectfully submitted,

/s/ FRANK A. McKINLEY,

Deputy City and County  
Attorney.

[Endorsed]: Filed October 10, 1949.